

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

(1) JAMES D. BUCHANAN,)	
)	
Plaintiff,)	
)	
vs.)	Case No.: 18-CV-171-RAW
)	
(1) TURN KEY HEALTH CLINICS, LLC,)	
(2) ROB FRAZIER, in his official capacity as)	
Muskogee County Sheriff,)	
(3) BOARD OF COUNTY COMMISSIONERS)	
OF MUSKOGEE COUNTY,)	
(4) DR. COOPER, and)	
(5) KATIE MCCULLAR, LPN,)	
)	
Defendants.)	

**EXHIBITS IN SUPPORT OF DEFENDANT, TURN KEY HEALTH CLINICS, LLC
MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS AND BRIEF IN SUPPORT**

Exhibit 12 Wilcox Depo

1 IN THE UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF OKLAHOMA

3 * * *

4 JAMES D. BUCHANAN,)
)
5 Plaintiff,) Case No. 18-CV-171-RAW
)
6 vs.)
)
7 TURN KEY HEALTH CLINICS,)
 LLC, et al.,)
8)
 Defendants.)

9

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12 DEPOSITION OF TODD R. WILCOX, M.D.

13 Taken on Tuesday, July 2, 2019
At 9:30 a.m.

14

15 Taken at Advanced Reporting Solutions
159 W. Broadway, Suite 100
16 Salt Lake City, Utah 84101

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1 APPEARANCES

2 For the Plaintiff:

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17 For the Defendant Sheriff Rob Frazier,

18 Board of County Commissioners of

19 Muskogee County:

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1 PROCEEDINGS

2 TODD R. WILCOX, M.D.

3 was called as a witness, having been first duly

4 sworn, was examined and testified on his oath as

5 follows:

6 --oOo--

7 EXAMINATION

8 BY MR. YOUNG:

9 Q. Dr. Wilcox, if you would please state

10 your full name for the record.

11 A. Todd Randall Wilcox.

12 Q. Thank you. And you understand that we're

13 here today because you've been listed by James

14 Buchanan as a retained expert in this matter; right?

15 A. Correct.

16 Q. All right. And it's my understanding

17 that you have given previous deposition testimony in

18 other cases. Is that right?

19 A. I have.

20 Q. So do we need to go over how depositions

21 work and deposition rules and all that, or do you

22 have a pretty good understanding?

23 A. I think I know the basics.

24 Q. All right. And as you said a minute ago,

25 you are on call. If you get a phone call, just let

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2 Witness

3 TODD R. WILCOX, M.D.

4 EXAMINATION BY PAGE

5 Mr. Young 4

6 Mr. Artus 139

7 Mr. Blakemore 173

8 EXHIBITS

9 EXHIBIT DESCRIPTION PAGE

10 No. 1 Todd Randall Wilcox, MD, MBA, FACP CV 5

11 No. 2 Wellcon Fee Schedule 2019 14

12 No. 3 Expert Report 27

13 No. 4 St. John Medical Center record 29

14 No. 5 St. John Medical Center record 35

15 No. 6 Greenhaw Chiropractic 38

16 No. 7 Emergency Department Record 50

17 No. 8 Muskogee Sheriff Office Release Sheet 59

18 No. 9 Handwritten notes 59

19 No. 10 Excerpt from James Buchanan deposition 75

20 No. 11 Expert Medical Report 82

21 No. 12 Turn Key Health record 113

22 No. 13 Wellcon Invoice 139

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1 us know, and we'll take a quick break.

2 (Exhibit 1 was marked.)

3 All right. Dr. Wilcox, I'm handing you a

4 copy of your CV. I'll mark it as Exhibit 1. This is

5 the CV that was produced in this case. Does that

6 look like it's accurate and up to date?

7 A. Yes, it does.

8 Q. All right. If you think of something

9 that's not on there, just let me know. I see here

10 that in 1996 you became the chief executive officer

11 of Wellcon, Inc. Is that right?

12 A. That's correct.

13 Q. Can you tell me what Wellcon, Inc. is,

14 please.

15 A. It is a company that focuses mostly on

16 the delivery of healthcare in correctional healthcare

17 and institutional healthcare spaces.

18 Q. Are you the only employee, or are there

19 several?

20 A. Well, I'm the only technical employee.

21 We have lots of contracted physicians who work for us

22 as well.

23 Q. Okay. And do you guys operate in Utah --

24 in the Salt Lake City area, in Utah, or is it more

25 spread out than that?

1 A. We currently do direct delivery of
2 healthcare in the Salt Lake County Jail.
3 **Q. Okay.**
4 **Okay. And I see also that you are the**
5 **medical director of the Salt Lake County Jail System,**
6 **1996 to current. Is that right?**

7 A. That's correct.

8 **Q. All right. Was there a reason those**
9 **three things happened at the same time?**

10 A. Well, they're interdependent. I'm
11 medical director as a result of having a contract
12 with the jail, and Wellcon has that contract.

13 **Q. Okay. Excuse me. It looks like from**
14 **August 2001 to current you're an attending physician**
15 **at After Hours Medical. Is that right?**

16 A. That's correct.

17 **Q. And what is After Hours Medical?**

18 A. After Hours Medical is a network of
19 healthcare clinics here in Salt Lake City, and
20 actually there's some clinics out of state now that I
21 don't ever work at, but they do have a couple extras.
22 And I'm an attending physician within their system
23 and will work some shifts, and I do some consulting
24 work with them on occasion with regard to treatment
25 plans and protocols.

1 **Q. And forgive me if I missed it. Is this**
2 **correctional healthcare also?**

3 A. No. This is private sector healthcare.
4 It would be in the areas of urgent care and primary
5 care.

6 **Q. Okay. That's what I was wondering.**
7 **All right. January of '03 to December of**
8 **2009, senior consultant at Phase 2 Consulting.**
9 **What's Phase 2 Consulting?**

10 A. Phase 2 Consulting was a nationally known
11 healthcare consulting group that was based out of
12 here and Austin, Texas, and they did quite a bit of
13 work in the hospital zone, but they also did some
14 work in correctional facilities; so I was one of
15 their consultants for projects that were in
16 correctional facilities.

17 **Q. Okay. They operated in both private and**
18 **correctional, but you focused on the correctional; is**
19 **that right?**

20 A. That's correct.

21 **Q. Okay. Thanks.**

22 **All right. Working back, Medical**
23 **Director, Maricopa County Jail System. Excuse me.**
24 **Is Maricopa County in Utah or -- it's in Arizona,**
25 **isn't it?**

1 A. Phoenix, Arizona.
2 **Q. Okay. So did you have to live in Phoenix**
3 **for that job?**

4 A. No. They wanted me to, but that was sort
5 of an emergency fill-in medical director engagement;
6 so I still lived here in Salt Lake and worked half
7 the week here in Salt Lake and then would fly down
8 and work half the week in Phoenix, and I did that for
9 a couple of years.

10 **Q. Okay. Working backwards, an attending**
11 **physician at Wasatch Physician Services. What is**
12 **that?**

13 A. Wasatch Physician Services was a group of
14 physicians that owned a network of clinics here in
15 town, and it's a similar setup to the after-hours
16 medical, and I worked for them for those four years.

17 **Q. And then I see you were the attending**
18 **physician at the State of Utah Department of**
19 **Corrections from August of '97 to January of '99. Is**
20 **that right?**

21 A. That's correct.

22 **Q. What exactly was the scope of your duties**
23 **in that position?**

24 A. That was a part-time position, and I was
25 one of the staff physicians there. I mostly took

1 care of individuals who had orthopedic issues and
2 musculoskeletal complaints and did some procedural
3 based care for patients that needed biopsies done and
4 that sort of thing for them.

5 **Q. And from June of 1994 to May of '96 we've**
6 **got a staff position at the Salt Lake County Jail; is**
7 **that right?**

8 A. That's correct.

9 **Q. And what exactly was the scope of your**
10 **duties there?**

11 A. Well, I was a physician who saw patients
12 and took care of them during that period of time
13 within the Salt Lake County Jail.

14 **Q. Okay.**

15 **It looks like you got an MBA after you**
16 **completed your residency. Is that right?**

17 A. Correct.

18 **Q. Is there any particular reason for that?**

19 A. Well, just general interest, I guess.
20 It's a program that's available here at the
21 University of Utah, and it was obviously something I
22 was interested in and had the opportunity to
23 participate in their program and decided to do it.

24 **Q. Okay.**

25 **I've got undergrad at Duke University**

<p style="text-align: right;">Page 10</p> <p>1 with a major in biological psychology; is that right?</p> <p>2 A. That's correct.</p> <p>3 Q. The then med school at Vanderbilt from</p> <p>4 August of '88 to May of 92; is that right?</p> <p>5 A. That's correct.</p> <p>6 Q. And I see you did an internship at the</p> <p>7 University of Utah. Is that when you first came to</p> <p>8 the state of Utah?</p> <p>9 A. Yes.</p> <p>10 Q. And the internship was in general</p> <p>11 surgery; is that right?</p> <p>12 A. Correct.</p> <p>13 Q. And then I see you stayed in Utah for</p> <p>14 residency in orthopedic surgery.</p> <p>15 A. That's right.</p> <p>16 Q. Is that right?</p> <p>17 A. That's correct.</p> <p>18 Q. Did you -- it doesn't look like you stuck</p> <p>19 with orthopedic surgery. Is that right?</p> <p>20 A. That's correct.</p> <p>21 Q. Was there a reason for that? Kind of</p> <p>22 what happened there?</p> <p>23 A. Well, I was doing my orthopedic surgery</p> <p>24 residency and ended up taking a year of sabbatical to</p> <p>25 take care of my father, who became gravely ill, and</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. (BY MR. YOUNG) All right. Doctor, we're</p> <p>2 back on after a quick break. I'm going through your</p> <p>3 CV, Defense Exhibit 1, and I notice that you've got</p> <p>4 several publications. All right. Are any of these</p> <p>5 publications related to surgery?</p> <p>6 A. Yes.</p> <p>7 Q. Which one, or which ones?</p> <p>8 A. So the last four on -- well, if you start</p> <p>9 with subtitle of "Publications" and go to the next</p> <p>10 page, which is not numbered, but there are four at</p> <p>11 the bottom of that page that begin with Goble, Goble,</p> <p>12 Wilcox and Goble. Next page there's Goble and</p> <p>13 Morris, Wilcox and Morris, Morris and Wilcox, Morris</p> <p>14 and Wilcox, Cogbill, Morris, Moore and Feliciano, and</p> <p>15 all of those are related to surgery.</p> <p>16 Q. All right. And perhaps I should have</p> <p>17 started with a more specific question. How about any</p> <p>18 of them related to orthopedic surgery?</p> <p>19 A. Well, many of them are.</p> <p>20 Q. Okay.</p> <p>21 A. Do you want me to outline them?</p> <p>22 Q. I guess let's just keep going with more</p> <p>23 specific questions before you do that. Are any of</p> <p>24 them related to the underlying medical issues in this</p> <p>25 case?</p>
<p style="text-align: right;">Page 11</p> <p>1 assisted him with his recovery, and during that</p> <p>2 period of time I began doing some other things in</p> <p>3 healthcare and ultimately ended up enjoying more than</p> <p>4 orthopedic surgery; so I made a decision to switch my</p> <p>5 areas of specialty.</p> <p>6 Q. Okay. Did you switch to urgent care?</p> <p>7 A. Urgent care and primary -- and primary</p> <p>8 care.</p> <p>9 Q. Okay. And I see you're board certified</p> <p>10 in urgent care medicine. Is that right?</p> <p>11 A. Yes, that's correct.</p> <p>12 Q. Are there any other board certifications</p> <p>13 that are not listed there?</p> <p>14 A. Well, I guess the HIV would technically</p> <p>15 be considered a board certification, and it's by exam</p> <p>16 and similar thing; so I'm also certified for HIV</p> <p>17 medicine.</p> <p>18 Q. Who issues that certification?</p> <p>19 A. The American Academy of HIV Medicine.</p> <p>20 MR. YOUNG: All right.</p> <p>21 THE WITNESS: Can we take just a brief</p> <p>22 moment? I just got a text from one of my nurses.</p> <p>23 MR. YOUNG: Sure, we can go off.</p> <p>24 (Off the record.)</p> <p>25 MR. YOUNG: Back on.</p>	<p style="text-align: right;">Page 13</p> <p>1 MR. BLAKEMORE: Object to form.</p> <p>2 A. No.</p> <p>3 Q. Okay. And I can keep going on the</p> <p>4 specificity. Do any of them have to do with cervical</p> <p>5 epidural abscess?</p> <p>6 A. No.</p> <p>7 Q. Okay. Did you rely on any of these</p> <p>8 articles in coming to your opinions in your report,</p> <p>9 which we'll get to in a minute?</p> <p>10 A. No.</p> <p>11 Q. I notice under the presentations there's</p> <p>12 one titled "Neurological Emergencies." Do you see</p> <p>13 that?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall that presentation?</p> <p>16 A. In vague recollection. I don't -- I</p> <p>17 can't recall all of the different topics that were</p> <p>18 covered in that presentation.</p> <p>19 Q. Okay. Do you know when you would have</p> <p>20 been giving that presentation?</p> <p>21 A. Not off the top of my head.</p> <p>22 Q. Can you ballpark it? Five, ten, fifteen</p> <p>23 years ago?</p> <p>24 A. Probably five to ten years ago.</p> <p>25 Q. Okay. Was it just you gave the</p>

<p style="text-align: right;">Page 14</p> <p>1 presentation one time, or were you doing some sort of</p> <p>2 circuit tour? I'm just trying to get an</p> <p>3 understanding of what kind of preparation it was.</p> <p>4 A. Well, I'm not on the circuit, so no.</p> <p>5 That was probably just a one-time presentation at</p> <p>6 national conference.</p> <p>7 Q. Okay. What kind of national conference?</p> <p>8 A. Probably the National Commission on</p> <p>9 Correctional Healthcare.</p> <p>10 Q. Okay. Do you have any materials that you</p> <p>11 might have used, a slide show or anything like that?</p> <p>12 A. It's likely that I have the slides for</p> <p>13 that.</p> <p>14 Q. Okay. I might ask to see if</p> <p>15 Mr. Blakemore can produce those. As I sit here right</p> <p>16 now, I don't know if I want to, but if you could when</p> <p>17 you get back, maybe take a look and see if you can</p> <p>18 dig that stuff up, if you don't mind, and he and I</p> <p>19 will work that out.</p> <p>20 (Exhibit 2 was marked.)</p> <p>21 Doctor, I'm going to give you defense</p> <p>22 Exhibit 2. It's a copy of your fee schedule. Does</p> <p>23 this look accurate?</p> <p>24 A. Yes.</p> <p>25 Q. I notice that up at the top it's got the</p>	<p style="text-align: right;">Page 16</p> <p>1 the time that you've done for plaintiffs versus</p> <p>2 defendants?</p> <p>3 A. I haven't exactly computed it. I would</p> <p>4 tell you just out of experience it has waxed and</p> <p>5 waned over the years. I think sum total it's</p> <p>6 probably near 50/50.</p> <p>7 Q. Okay. Do you remember the last -- when</p> <p>8 the last time you testified on behalf of a defendant</p> <p>9 was?</p> <p>10 A. I would have to look on my -- on my</p> <p>11 deposition list. Did you --</p> <p>12 Q. It's okay. I was just curious if you --</p> <p>13 A. I can't remember.</p> <p>14 Q. Okay.</p> <p>15 And I haven't seen any of your invoices</p> <p>16 in this case. Do you know how much you've billed the</p> <p>17 plaintiff to date?</p> <p>18 A. Not exactly.</p> <p>19 Q. Do you have a ballpark?</p> <p>20 A. I'd hate to be specific. I don't really</p> <p>21 know the number --</p> <p>22 Q. Okay.</p> <p>23 A. -- but I have something.</p> <p>24 MR. BLAKEMORE: Let me see if I can find</p> <p>25 it. I should have sent it to you.</p>
<p style="text-align: right;">Page 15</p> <p>1 Wellcon header, and you are the CEO of that company;</p> <p>2 is that right?</p> <p>3 A. Correct.</p> <p>4 Q. All right. Who determines your rates,</p> <p>5 then?</p> <p>6 A. Well, it would be me.</p> <p>7 Q. Okay. What percentage of those fees do</p> <p>8 you personally receive?</p> <p>9 A. Well, it's very dependent upon the</p> <p>10 situation and the day. Oftentimes when I have to do</p> <p>11 some activity associated with this, I'm not able to</p> <p>12 work as a clinical physician; so I have to hire</p> <p>13 someone to cover my patients for me during that</p> <p>14 period of time, and so oftentimes a significant</p> <p>15 portion of this goes to that coverage.</p> <p>16 Q. Okay.</p> <p>17 You have testified as an expert witness</p> <p>18 many times in the past; is that right?</p> <p>19 A. Well, I have done it in the past. I</p> <p>20 don't know how to quantify the word "many."</p> <p>21 Q. Okay. Fair enough. About how many times</p> <p>22 do you think you've done it?</p> <p>23 A. Estimate, I've probably given about</p> <p>24 60 depositions.</p> <p>25 Q. Okay. Can you estimate the percentage of</p>	<p style="text-align: right;">Page 17</p> <p>1 MR. YOUNG: It's okay. We can circle back</p> <p>2 on that.</p> <p>3 THE WITNESS: That information is</p> <p>4 available.</p> <p>5 Q. (BY MR. YOUNG) Right. I understand.</p> <p>6 When you bill, do you include review of</p> <p>7 records, testimony, and discussions with counsel?</p> <p>8 A. I'm sorry. I'm not sure I quite</p> <p>9 understand what you're asking me.</p> <p>10 Q. That's fair. I see here that you bill</p> <p>11 for your review of records. I was just curious if</p> <p>12 your billing includes discussion with counsel. I'm</p> <p>13 just trying to get an idea for everything you bill</p> <p>14 for, I guess.</p> <p>15 A. Sure. I mean, what I bill for are the</p> <p>16 standard time elements for serving as an expert, so</p> <p>17 review of records, if there is a phone discussion</p> <p>18 that occurs, sometimes there's additional research</p> <p>19 that has to be done that I have to do, and all of</p> <p>20 those take time; so fundamentally if I have to spend</p> <p>21 time on a case then I will bill for that.</p> <p>22 Q. Okay. And that includes preparing the</p> <p>23 report, I assume.</p> <p>24 A. Yes, of course.</p> <p>25 Q. Would you agree with me that as an expert</p>

<p style="text-align: right;">Page 18</p> <p>1 it's important to be fair and impartial to all 2 parties? 3 A. Yes. 4 Q. Would you agree that in your role as an 5 expert you are not an advocate for any particular 6 party? 7 A. Correct. 8 Q. Okay. And you would agree with me that 9 your testimony should be fair and accurate and 10 objective and thorough? 11 A. Yes, I think all those words pertain. 12 Q. And would you agree with me that the 13 expert should limit his opinions to the area -- his 14 area of expertise? 15 A. Yes. I think there are lots of areas, 16 though, that are general medicine that sort of all 17 physicians have expertise in; so I think those are 18 fair areas as well. 19 Q. What type of areas? 20 A. Oh, things like interpretation of vital 21 signs, interpretation of labs, I mean just basic -- 22 the basic elements of healthcare delivery that cut 23 across all specialties. 24 Q. Okay. Would you agree with me that as an 25 expert you have a duty to review all of the pertinent</p>	<p style="text-align: right;">Page 20</p> <p>1 spine which required surgery; is that right? 2 A. Yes, but I don't think surgery is 3 singular. I think he required more than one. 4 Q. That's correct. 5 Are you aware that Mr. Buchanan was at 6 St. Johns in Tulsa in the ICU prior to his 7 incarceration at Muskogee County Jail? 8 A. Yes, I'm aware that he was at St. John's. 9 I don't know his exact room assignment and level -- 10 and level of care they were delivering at that 11 particular room, but, yes, I'm aware that he was 12 there. 13 Q. Let me ask you this: Have you reviewed 14 the medical records from Mr. Buchanan's stay at 15 St. John's from September 17th, 2016, to September 31 16 of 2016? 17 A. I have not. 18 Q. Okay. Then is it fair to say you also 19 haven't reviewed the imaging records that were done 20 during that period? 21 A. Correct. 22 Q. Okay. Have you ever treated a patient 23 with a cervical epidural abscess? 24 A. Yes. 25 Q. How many times?</p>
<p style="text-align: right;">Page 19</p> <p>1 evidence and records? 2 A. Yes. 3 Q. And would you agree with me that an 4 expert witness should have appropriate education and 5 experience in the specific area in which he or she is 6 testifying? 7 A. Yes. I don't know how you can really be 8 an expert in something if you don't have the 9 appropriate preparation. 10 Q. Well, it wouldn't be fair for someone who 11 didn't have such expertise to be testifying on topics 12 that they didn't have the proper education about. 13 Would you agree with that? 14 MR. BLAKEMORE: Object to form. 15 A. I would agree, and I think there are 16 legal mechanisms to inquire about that in case 17 someone crosses the line. 18 Q. I believe I saw in your report that some 19 of the records that you have reviewed are the records 20 from when James Buchanan was at Hillcrest in 21 Oklahoma. Is that right? 22 A. Yes, I remember some records from 23 Hillcrest. 24 Q. All right. So then you're aware that 25 Mr. Buchanan had a cervical epidural abscess on his</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Well, in training we had several patients 2 who had that condition, and we took them to the 3 operating room to address that, but I was not the 4 attending physician. I was just in training at that 5 time. 6 Q. When you -- sorry. I didn't mean to 7 interrupt you. When you say "training," are you 8 talking about before -- are you talking about 9 internship? Residency? What are we talking about? 10 A. Both. You know, in the internship you 11 rotate through neurosurgical surgery and orthopedic 12 surgery, both whom manage spine conditions. And then 13 in orthopedic surgery you spend quite a bit of time 14 on the spine service, and there would be cases of 15 epidural abscess that would come in; so I do have 16 some familiarity with the surgical techniques and 17 have at least seen those cases. 18 Q. Okay. 19 A. And then as an attending physician within 20 the correctional facility, I can remember three or 21 four cases over the years of patients with this 22 condition who we diagnosed and referred out. 23 Q. Dr. Wilcox, do you intend to come to 24 trial and offer opinions to the Oklahoma jury as to 25 the cause of Mr. Buchanan's cervical epidural</p>

<p style="text-align: right;">Page 22</p> <p>1 abscess?</p> <p>2 A. Well, the cause of it is really sort of</p> <p>3 spontaneous. It's a spontaneous event that occurred.</p> <p>4 There wasn't anything that specifically caused it.</p> <p>5 Q. So is that a yes, that you do intend to</p> <p>6 offer causation opinions, or, no, that you're only</p> <p>7 going to focus on the correctional healthcare?</p> <p>8 MR. BLAKEMORE: Object to form.</p> <p>9 A. Well, I think the causation opinions are</p> <p>10 sort of general in the sense of how this condition</p> <p>11 arises, but my area of expertise is in the delivery</p> <p>12 of correctional healthcare.</p> <p>13 Q. Would you agree with me that -- strike</p> <p>14 that.</p> <p>15 Do you intend to come to trial and offer</p> <p>16 any causation opinions as it relates to</p> <p>17 Mr. Buchanan's neurological function as it -- as he</p> <p>18 is today?</p> <p>19 A. Well, I don't have the ability to do that</p> <p>20 unless I examined him.</p> <p>21 Q. All right. And you haven't done a</p> <p>22 personal examination; is that right?</p> <p>23 A. That's correct.</p> <p>24 Q. Would you agree with me that you are not</p> <p>25 qualified to render opinions in the field of</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Well, you were inquiring about whether I</p> <p>2 could offer opinions in the very broad field of</p> <p>3 orthopedics, and I -- and I indicated that I could</p> <p>4 and that I still practice orthopedics but in a</p> <p>5 nonoperative fashion, but I said I would not offer an</p> <p>6 opinion with respect to neurosurgical techniques</p> <p>7 which are utilized in both neurosurgery and</p> <p>8 orthopedic surgery.</p> <p>9 Q. Okay. And perhaps I didn't ask the</p> <p>10 question well, because I think you answered it there,</p> <p>11 but would you say that you're going to offer</p> <p>12 causation opinions in the field of orthopedic</p> <p>13 surgery?</p> <p>14 A. No.</p> <p>15 MR. BLAKEMORE: Object to form.</p> <p>16 Q. (BY MR. YOUNG) Okay. You're right. I</p> <p>17 asked it broadly first with orthopedics. What I</p> <p>18 think I meant was orthopedic surgery. Thank you.</p> <p>19 All right. Are you planning on offering</p> <p>20 any opinions regarding physical or occupational</p> <p>21 rehabilitation in this case?</p> <p>22 A. No.</p> <p>23 Q. Okay.</p> <p>24 Would you agree with me that the practice</p> <p>25 of medicine is largely about making judgment calls in</p>
<p style="text-align: right;">Page 23</p> <p>1 orthopedic surgery?</p> <p>2 A. Well, I think that's a little overly</p> <p>3 broad. I certainly still practice a lot of non --</p> <p>4 nonsurgical orthopedic surgery or orthopedic</p> <p>5 medicine, and that's a pretty broad field that I</p> <p>6 would be qualified to offer opinions in, but I</p> <p>7 wouldn't offer opinions with respect to, for example,</p> <p>8 neurosurgical techniques.</p> <p>9 Q. I mean, I know you did the residency in</p> <p>10 orthopedic surgery, but you're not -- you didn't</p> <p>11 complete the residency; is that right?</p> <p>12 A. Correct.</p> <p>13 Q. And you're not board certified in</p> <p>14 orthopedic surgery; is that right?</p> <p>15 A. That's correct.</p> <p>16 Q. And nor are you board certified in</p> <p>17 neurosurgery; is that right?</p> <p>18 A. That's correct.</p> <p>19 Q. It sounded like from your answer you do</p> <p>20 feel like you can offer opinions regarding orthopedic</p> <p>21 surgery, but you draw the line at neurosurgical</p> <p>22 techniques. Did I get that right?</p> <p>23 A. You did not.</p> <p>24 Q. Okay. Can you explain it more for me,</p> <p>25 please?</p>	<p style="text-align: right;">Page 25</p> <p>1 the moment?</p> <p>2 MR. BLAKEMORE: Object to the form.</p> <p>3 A. No.</p> <p>4 Q. Would you agree with me that making</p> <p>5 judgment calls is a part of practicing medicine?</p> <p>6 A. Yes, but, you know, those judgment calls</p> <p>7 are based on the science of medicine.</p> <p>8 Q. Of course.</p> <p>9 A. So, yes, but --</p> <p>10 Q. Would you agree with me that it's not a</p> <p>11 perfect science?</p> <p>12 MR. BLAKEMORE: Object to form.</p> <p>13 A. Well, I don't know quite what that --</p> <p>14 what you mean by that.</p> <p>15 Q. I guess I'm asking you there is no one</p> <p>16 way or perfect way to practice medicine. Would you</p> <p>17 agree with that statement?</p> <p>18 A. I guess I really still don't quite know</p> <p>19 how to answer that. There are oftentimes more than</p> <p>20 one way to treat a condition that would be</p> <p>21 successful.</p> <p>22 Q. Okay. You have to use your clinical</p> <p>23 judgment based on education, training, experience;</p> <p>24 right?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 26</p> <p>1 Q. Would you agree with me that the 2 providers who are best suited to make those types of 3 judgment calls are those actually present, seeing the 4 patient with their hands on the patient? 5 A. Well, certainly. One of the mantras of 6 medicine is that there's no substitute for actually 7 seeing the patient. 8 Q. And can you appreciate and understand 9 that in the practice of medicine there are sometimes 10 things that are done which are not charted? 11 MR. BLAKEMORE: Object to form. 12 A. Yes. 13 Q. Okay. And would you agree with me that 14 the person best able to fill in those gaps would be 15 the provider who was providing the hands-on care? 16 A. Well, in the sense that it's not charted, 17 they would be sort of your only option for inquiring 18 about whether they did or did not do something. 19 Q. And you reviewed deposition transcripts; 20 so you know that many of the treaters in this case 21 have been deposed to fill in any gaps of what they 22 did, what they saw, and what they remember; is that 23 right? 24 MR. BLAKEMORE: Object to form. 25 A. The treaters in this case, particularly</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. Okay. And then is it fair to assume that 2 this list compiles all of the records you have 3 reviewed in this case? 4 A. Yes. 5 Q. There's not anything left off. Okay. 6 And you haven't reviewed anything else since this 7 list was created? 8 A. Correct. 9 Q. Have you asked for any additional 10 materials that you would like to review? 11 A. I have not asked, although I have become 12 aware that there have been some additional materials 13 that have been produced. I think there's an expert 14 report from perhaps on your side of the case that is 15 available, and I just found out about Dr. Cooper's 16 deposition, which I did not know about. So... 17 Q. Okay. That's fair. All that happened, I 18 believe, since you have been produced any of these 19 materials; so I'm just curious what you've seen. 20 Okay. As for the report itself, did 21 you -- first of all, are there any other reports 22 you've prepared in this case, or is this the only 23 one? 24 A. This is the only one. 25 Q. Did you actually type it in its entirety?</p>
<p style="text-align: right;">Page 27</p> <p>1 the depositions I have read, would be the nurses. 2 Q. Okay. Well, you read Dr. Cooper's 3 deposition too; is that right? 4 MR. BLAKEMORE: I don't think we had the 5 transcript at the time of his report. 6 MR. YOUNG: Okay. 7 THE WITNESS: No, I have not read his 8 deposition. 9 Q. (BY MR. YOUNG) Okay. That's fine. I 10 was wondering if you have a different definition of 11 treater, but that's fine. We'll move on. 12 A. Well, I was going to argue with you about 13 whether we can call nurses treaters. So... 14 Q. I am still working on all the lingo -- 15 healthcare provider, treater. The person providing 16 the healthcare is really all I meant. 17 All right. With that we'll go on to the 18 expert report. 19 (Exhibit 3 was marked.) 20 Doctor, I've marked your report as 21 defendants' Exhibit 3. You recognize that; right? 22 A. Yes, I do. 23 Q. Okay. On the second page there is a list 24 of materials reviewed. Is that accurate? 25 A. Yes.</p>	<p style="text-align: right;">Page 29</p> <p>1 A. I had some assistance with some of the 2 citations, which I did not retype, but overall the 3 rest of the report I typed myself. 4 Q. Who helped you with the citations? 5 A. Mr. Blakemore. 6 Q. So then all of the substantive material 7 you drafted yourself; is that right? 8 A. That's correct. 9 Q. Okay. And does it contain your complete 10 and final opinions? 11 A. I would say that it contains my opinions 12 at this point based on the information that I have 13 reviewed, but I reserve the right to change those or 14 add to those if there is additional information that 15 I review that is relevant. 16 Q. Okay. Any changes you'd like to make 17 now? 18 A. No. 19 Q. So but for that caveat you just made, you 20 stand by all of the statement of opinions in this 21 report; is that right? Is that fair? 22 A. That's correct. 23 Q. All right. Keep that handy. We're going 24 to circle back. 25 (Exhibit 4 was marked.)</p>

<p style="text-align: right;">Page 30</p> <p>1 Doctor, I'm going to give to you what I</p> <p>2 have marked as defense Exhibit 4, and I'll represent</p> <p>3 to you that this is the discharge instructions from</p> <p>4 Mr. Buchanan's stay at St. John's. I'll further</p> <p>5 represent to you that there is a front page of it</p> <p>6 that for reasons I couldn't figure out this morning</p> <p>7 with the printer would not print out. However, what</p> <p>8 I want to ask you about is summarized here on the</p> <p>9 second page --</p> <p>10 A. Okay.</p> <p>11 Q. -- so we're going to make due. Take a</p> <p>12 moment and look at it, if you don't mind.</p> <p>13 Actually, Mr. Artus was kind enough to</p> <p>14 give me a full -- he actually had it; so I'm going to</p> <p>15 try again.</p> <p>16 MR. BLAKEMORE: Do you want to mark that?</p> <p>17 MR. YOUNG: Yeah. Let's just go ahead and</p> <p>18 call it five.</p> <p>19 MR. ARTUS: Five instead of four.</p> <p>20 MR. YOUNG: Can we pull that sticker off,</p> <p>21 do you think, or is it too late? I'll try. I knew</p> <p>22 that printer was going to be a problem.</p> <p>23 (Exhibit 4 was re-marked.)</p> <p>24 MR. YOUNG: Okay. There you go. That's</p> <p>25 the whole thing.</p>	<p style="text-align: right;">Page 32</p> <p>1 chest.</p> <p>2 Q. Okay. Thank you for that. And neither</p> <p>3 of them revealed any indication of a -- neither of</p> <p>4 them alerted the physician that Mr. Buchanan might</p> <p>5 have a cervical epidural abscess. Is that fair?</p> <p>6 MR. BLAKEMORE: Object to form.</p> <p>7 A. Well, I think your question is perhaps a</p> <p>8 bit leading. I think the way that you would state</p> <p>9 that is that the MRI was done and there was no</p> <p>10 evidence of abscess on the MRI.</p> <p>11 Q. Okay.</p> <p>12 It looks like the second sentence under</p> <p>13 "Hospital Course Summary" says: "Initial scans were</p> <p>14 done at OSH showing a possible hematoma."</p> <p>15 Is that right?</p> <p>16 A. Yes. It probably would be best to read</p> <p>17 the whole sentence. "Initial scans were done at OSH</p> <p>18 showing possible hematoma in the left lateral base of</p> <p>19 the neck, multiple rib fractures and left -- and a</p> <p>20 left pneumothorax," period.</p> <p>21 Q. Okay.</p> <p>22 On the next page under "Follow Up</p> <p>23 Instructions and Plan," we've got "Follow up with</p> <p>24 Dallas Buck on 10/7 at 1400; Follow up with</p> <p>25 Dr. Rapacki on 10/12"; Obtain AP/lateral cervical</p>
<p style="text-align: right;">Page 31</p> <p>1 Bob, did you get one?</p> <p>2 MR. BLAKEMORE: Yes, I did.</p> <p>3 (Dr. Wilcox reviews document.)</p> <p>4 THE WITNESS: Okay.</p> <p>5 Q. (BY MR. YOUNG) Okay. You'll notice</p> <p>6 under "Discharge Diagnoses" up top you've got</p> <p>7 "Auto v. Pedestrian; Closed pneumothorax; Multiple</p> <p>8 closed fracture of ribs of left side."</p> <p>9 Obviously, there's no diagnosis for</p> <p>10 epidural abscess; right?</p> <p>11 A. Correct.</p> <p>12 Q. Now, you'll notice under "Consultants"</p> <p>13 there's Dr. Rapacki, MD. I'll represent to you that</p> <p>14 he is a neurosurgeon who treated Mr. Buchanan during</p> <p>15 his stay at St. John's, and he didn't diagnose the</p> <p>16 cervical epidural abscess; is that right?</p> <p>17 A. Correct.</p> <p>18 Q. I believe he -- first, it looks like</p> <p>19 there was an MRI and there was a CT scan. So there</p> <p>20 was imaging done, and they didn't see a cervical</p> <p>21 epidural abscess; right?</p> <p>22 MR. BLAKEMORE: Object to form.</p> <p>23 A. Well, we just have the hospital summary</p> <p>24 course here, but it indicates there was an MRI done</p> <p>25 of his cervical spine. The CT scan was done of his</p>	<p style="text-align: right;">Page 33</p> <p>1 spine x-ray prior to following up with Dr. Rapacki.</p> <p>2 Is that right?</p> <p>3 A. That's what it says.</p> <p>4 Q. And have you seen any records that</p> <p>5 indicate that Mr. Buchanan followed up as instructed?</p> <p>6 A. No.</p> <p>7 Q. And, additionally, this discharge summary</p> <p>8 at the top is signed and dated on September 30th,</p> <p>9 2016; is that right?</p> <p>10 A. I don't see that on the second page.</p> <p>11 Q. I'm sorry. First page up at the top</p> <p>12 right.</p> <p>13 A. There's more than one time stamp</p> <p>14 indicated up here on the upper right. I don't know</p> <p>15 how to interpret those. Dr. Yearly had a time stamp</p> <p>16 on 10/10 of 2016, and Dallas Buck has a time stamp on</p> <p>17 9/30/2016.</p> <p>18 Q. Okay. How about this. The top left,</p> <p>19 date of discharge is 9/30/16. Can we agree on that?</p> <p>20 A. Yes, we can.</p> <p>21 Q. All right. And I bring that up because</p> <p>22 in your complaint -- I'm sorry -- in your report,</p> <p>23 just as in the amended complaint, on the second page</p> <p>24 it states that "Buchanan was transferred to St. John</p> <p>25 in Tulsa, where he was hospitalized over the course</p>

<p style="text-align: right;">Page 34</p> <p>1 of approximately six weeks due to his injuries. He 2 was discharged from St. John Medical Center on or 3 about October 30th, 2016." 4 And then it cites to the Hillcrest 5 records at Plaintiff 002 to 005. Did you get that 6 information from the Hillcrest records? 7 A. I'd have to go back and look at the 8 citation. 9 Q. Okay. But we can agree that he did 10 not -- Mr. Buchanan did not spend six weeks at 11 St. John's. He spent two weeks. Right? 12 A. Yes, approximately two weeks. 13 Q. Approximately two weeks. That's fine. 14 Is it fair to say, though, that when you wrote your 15 report you were under the impression it was six 16 weeks? 17 A. Yes. 18 MR. BLAKEMORE: Before you move on to 19 that, can we -- we've been going about 50 minutes. 20 Can we take a restroom break? 21 MR. YOUNG: Sure. 22 (Recess.) 23 MR. YOUNG: Dr. Wilcox, after a short 24 break we're back on the record. You've been in enough 25 depositions, I assume, to know that if at anytime you</p>	<p style="text-align: right;">Page 36</p> <p>1 Complained of -- it says "CO." That means complained 2 of; right? 3 A. It does. 4 Q. "Complained of neck and bilateral neck 5 pain after bicycle accident. Patient states he ran 6 out of his pain medications 3 days ago. Had a 7 bicycle accident on 9/16/16 and was discharged on 8 9/30/16. Has not been able to find a PCP in 9 Muskogee." 10 Is that right? 11 A. You read that correctly. 12 Q. Just look at the following page, St. John 13 Medical Center 1020. I'd like to direct your 14 attention down to the very bottom left under "Pain 15 Assessment Adult." Can you see what he rates his 16 numeric pain score as? 17 A. It is listed as a nine. 18 Q. And the primary pain location is neck; 19 right? 20 A. Correct. 21 Q. And the primary pain quality is sharp; 22 right? 23 A. Correct. 24 Q. Doctor, would you please flip to 25 Bates 1023. If you'll look in the middle under</p>
<p style="text-align: right;">Page 35</p> <p>1 want to change or amend anything you've said after a 2 break or anytime really, feel free to do that. 3 THE WITNESS: Thank you. 4 MR. YOUNG: All right. 5 (Exhibit 5 was marked.) 6 Q. (BY MR. YOUNG) Doctor, I'm going to hand 7 you what I've marked as defense Exhibit 5. It's 8 quite a few pages. You don't have to flip through 9 all of them. I'll represent to you that these are 10 records from an ER visit when Mr. Buchanan -- after 11 his discharge from the ICU at St. John's. He 12 returned approximately two weeks later to the ER, and 13 that's what these records encompass. 14 Is it fair to say you've never seen these 15 records before? 16 A. That's correct. 17 Q. All right. 18 Doctor, would you please flip -- hang on. 19 Would you please flip to Bates page No st. John 20 Medical Center 1019. Okay. About halfway down the 21 left side you'll see "Diagnoses Active." It says: 22 "Neck pain." Do you see that? 23 A. Yes. 24 Q. And then under "General" for "Chief 25 Complaint Description" it says -- it says:</p>	<p style="text-align: right;">Page 37</p> <p>1 "History of Present Illness" a couple of sentences 2 in, it says: "Pain has been constant since the 3 accident, without change. Pain is sharp, constant, 4 severe, increases with palpation, without radiation." 5 Did I read that right? 6 A. You did. 7 Q. And, Doctor, will you please flip to 8 1025. At the very top we've got a differential 9 diagnosis that says: "Neck injury, cervical strain, 10 and neck pain." Is that right? 11 A. I'm sorry. Say that again, please. 12 Q. The very top, read that, please. 13 A. Yes. "Neck injury, cervical strain, neck 14 pain." 15 Q. All right. Now flip back, please, to 16 1017. He was given two prescriptions, one for 17 methocarbamol, which is known as Robaxin, and another 18 for naproxen, aka Naprosin; is that right? 19 A. Yes. 20 Q. All right. So he came to the ER. He 21 complained of constant neck pain rating at a ten, and 22 they discharged him with prescriptions of Naprosin 23 and Robaxin. Did I get that right? 24 MR. BLAKEMORE: Object to form. 25 A. You did not.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. What did I miss?</p> <p>2 A. His pain was rated as a nine, I believe.</p> <p>3 And you murdered the pronunciation of those, but</p> <p>4 we'll let that pass.</p> <p>5 Q. I appreciate it.</p> <p>6 And if you'll look on page 1013, left</p> <p>7 side about halfway down, the follow-up instructions</p> <p>8 say to follow up with Dallas Buck. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And one of those medications I</p> <p>11 mentioned, the Robaxin, what does that treat?</p> <p>12 A. It is a muscle relaxer.</p> <p>13 (Exhibit 6 was marked.)</p> <p>14 Q. All right. I'm going to hand you some</p> <p>15 records that are defense Exhibit 6. I'll represent</p> <p>16 to you these are chiropractor records from</p> <p>17 Dr. Greenhaw in Muskogee, Oklahoma. This is</p> <p>18 Dr. Greenhaw -- strike all that.</p> <p>19 These are chiropractic records. Is it</p> <p>20 fair to say you have not seen these records?</p> <p>21 A. That's correct.</p> <p>22 Q. All right. Would you please flip to</p> <p>23 Bates No. Frank Greenhaw 002. All right. We're</p> <p>24 going to have to deal with some reading of</p> <p>25 handwriting, but I'm assuming you're well versed in</p> <p style="text-align: right;">Page 39</p> <p>1 that. So on the left side a few rows down it says:</p> <p>2 "Please describe the principal health problems for</p> <p>3 which you came to this office," and it says "Neck and</p> <p>4 shoulders"; right?</p> <p>5 A. Yes.</p> <p>6 Q. All right. And then about halfway down</p> <p>7 on the right side it says: "Does this interfere with</p> <p>8 your normal living and work?" The box for "Yes" is</p> <p>9 checked. And then it says: "In what way?" I</p> <p>10 believe it says: "I can't do much."</p> <p>11 Does that look right to you?</p> <p>12 A. I agree with that.</p> <p>13 Q. The next page, 003, it says again the</p> <p>14 conditions he's most interested in treating are his</p> <p>15 neck and shoulders, and then below that it asks:</p> <p>16 "What functions are you unable to perform or induce</p> <p>17 pain upon performance? List in order of severity."</p> <p>18 And in parentheses it gives examples of sitting,</p> <p>19 walking, bending, lying down, etc. Mr. Buchanan</p> <p>20 writes in "Almost anything"; is that right?</p> <p>21 A. That's what I see there.</p> <p>22 Q. So when it asks, "What functions are you</p> <p>23 unable to perform or induce pain?" He says, "Almost</p> <p>24 anything."</p> <p>25 MR. BLAKEMORE: Object to form.</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And just so we can have an</p> <p>3 accurate record, on the top of 002 the date is marked</p> <p>4 October 21st, 2016; right?</p> <p>5 A. Correct.</p> <p>6 Q. And that would be approximately two weeks</p> <p>7 before he came to Muskogee County Jail. Does that</p> <p>8 sound right?</p> <p>9 A. Approximately, yes.</p> <p>10 Q. All right. On page 004, again dated</p> <p>11 October 21st of 2016, we've got chart notes. Next to</p> <p>12 the abbreviation Q -- do you know what the</p> <p>13 abbreviation Q stands for in this context? Because I</p> <p>14 wasn't sure.</p> <p>15 A. I can only speculate that it stands for</p> <p>16 "quality."</p> <p>17 Q. Okay. So in that case, if it stands for</p> <p>18 quality, would it be reasonable to assume that that</p> <p>19 means pain quality?</p> <p>20 MR. BLAKEMORE: Object to form.</p> <p>21 A. Yes.</p> <p>22 Q. Because it says next to Q "Intense pain,</p> <p>23 constant," and whether we speculate as to the meaning</p> <p>24 of the letter Q, we can be sure that he's describing</p> <p>25 his pain as intense and constant. Is that fair?</p> <p style="text-align: right;">Page 41</p> <p>1 A. That's what it says.</p> <p>2 Q. We can see next to "R" it says: "Left</p> <p>3 arm to the hand. Left is worse. Right arm to the</p> <p>4 elbow."</p> <p>5 And then to "T" again it says "Constant."</p> <p>6 And then we have got a notation that he went to the</p> <p>7 ER at St. John's for his history. Does that all look</p> <p>8 right to you?</p> <p>9 A. Yes.</p> <p>10 Q. Would you please flip to Frank</p> <p>11 Greenhaw 006. I'll apologize. The dates are a</p> <p>12 little out of order, but we'll make it work. Near</p> <p>13 the top this one is dated October 31st of 2016, which</p> <p>14 would be about four days before he came to Muskogee</p> <p>15 County Jail; is that right?</p> <p>16 A. I believe that's correct.</p> <p>17 Q. All right. Just below halfway on the</p> <p>18 page he lists -- where it says, "Name your conditions</p> <p>19 in the spaces below," it says: "1. Arm; 2. Neck;</p> <p>20 3. Shoulders." Is that right?</p> <p>21 A. Yes.</p> <p>22 Q. Now, next to "Arm" we've got a pain level</p> <p>23 where he circles 10, next to "Neck" the pain level</p> <p>24 is 9, and next to "Shoulders" we've got a pain level</p> <p>25 of 9. Does that all look right?</p>
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<p style="text-align: right;">Page 42</p> <p>1 A. Yes, it does.</p> <p>2 Q. Please flip to the next page. We've got</p> <p>3 another treatment at the chiropractor dated 10/26/16,</p> <p>4 so approximately a week before his incarceration, and</p> <p>5 under the "Conditions" he lists "Neck and shoulders";</p> <p>6 is that right?</p> <p>7 A. Yes.</p> <p>8 Q. And this time he rates that as a ten. Is</p> <p>9 that fair?</p> <p>10 A. Yes.</p> <p>11 Q. All right. Next page, again another</p> <p>12 treatment at the chiropractor. This one is 10/24 of</p> <p>13 '16, approximately ten days before his incarceration.</p> <p>14 Is that fair?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And again we've got neck and</p> <p>17 shoulders listed, and again he rates the pain at ten</p> <p>18 for both the neck and shoulders. Is that fair?</p> <p>19 A. Yes.</p> <p>20 Q. All right.</p> <p>21 All right. So included in these</p> <p>22 chiropractic records are records from a pain</p> <p>23 management specialist named Dr. Trinidad.</p> <p>24 Mr. Buchanan went to see Dr. Trinidad on October 27th</p> <p>25 of 2016, about a week before his incarceration, and</p>	<p style="text-align: right;">Page 44</p> <p>1 He describes the range of motion as "Range of motion</p> <p>2 testing of left shoulder revealed flexion</p> <p>3 150 degrees, extension 20 degrees, abduction</p> <p>4 120 degrees, adduction 50 degrees, internal rotation</p> <p>5 30 degrees and external rotation 50 degrees."</p> <p>6 Did I get that right?</p> <p>7 A. You read those correctly.</p> <p>8 Q. All right. Does that mean anything to</p> <p>9 you?</p> <p>10 MR. BLAKEMORE: Object to form.</p> <p>11 A. Well, he's documenting his range of</p> <p>12 motion, which is fairly good actually.</p> <p>13 Q. You would not describe that as a decrease</p> <p>14 in range of motion, then?</p> <p>15 A. I didn't say that. So compared to</p> <p>16 stone-cold normal, many of these different motions</p> <p>17 are slightly less than normal, but it's still fairly</p> <p>18 mobile in all of these different planes of motion.</p> <p>19 Q. Okay. Well, I asked it one way. I'll</p> <p>20 ask it this way now: Would you describe that as a</p> <p>21 decrease in range of motion in the shoulder?</p> <p>22 A. Well, as I said, compared to textbook</p> <p>23 normal, the answer is it's a slight decrease, but</p> <p>24 it's important to know what his baseline is.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 43</p> <p>1 under "Present Symptoms: Mr. Buchanan complains of</p> <p>2 constant pain and spasms in his neck to upper midback</p> <p>3 with pain and paresthesias into the left arm."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. What is paresthesias?</p> <p>7 A. Usually described as a nerve tingling</p> <p>8 sensation.</p> <p>9 Q. Okay. And then he goes on to say that</p> <p>10 Mr. Buchanan has pain and stiffness in his left</p> <p>11 shoulder with crepitance and restricted movement and</p> <p>12 weakness in the shoulder.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. What is crepitance?</p> <p>16 A. Crepitance is a sensation on physical</p> <p>17 exam of -- how would you describe it? It's roughness</p> <p>18 as you move the body part.</p> <p>19 Q. Okay. And it goes on to describe</p> <p>20 "restricted movement and weakness in the shoulder."</p> <p>21 Okay.</p> <p>22 Will you please flip to Frank Greenhaw</p> <p>23 page 010. The top paragraph is a continuation of the</p> <p>24 physical examination, and Dr. Trinidad describes</p> <p>25 Mr. Buchanan's range of motion in his left shoulder.</p>	<p style="text-align: right;">Page 45</p> <p>1 A. Many people have old injuries, and their</p> <p>2 range of motion is limited to begin with. But he has</p> <p>3 a functional range of motion in his shoulder, as</p> <p>4 evidenced by this physical exam finding.</p> <p>5 Q. Okay.</p> <p>6 Well, then the cervical spine revealed --</p> <p>7 "Musculoskeletal examination revealed tenderness and</p> <p>8 spasm from C1 through C7 bilaterally. Range of</p> <p>9 motion testing in the cervical spine revealed flexion</p> <p>10 to be 30 degrees, extension 20 degrees, right lateral</p> <p>11 bending 20 degrees, left lateral bending 20 degrees,</p> <p>12 right rotation 30 degrees and left rotation</p> <p>13 30 degrees."</p> <p>14 Did I get that right?</p> <p>15 A. You did.</p> <p>16 Q. All right. Does that describe a decrease</p> <p>17 in range of motion?</p> <p>18 A. Compared to normal range of motion, this</p> <p>19 is a decrease in his range of motion, which would be</p> <p>20 common with the kind of injury that he had.</p> <p>21 Q. When you say "the kind of injury," you</p> <p>22 mean motor vehicle accident?</p> <p>23 A. Yes, and the musculoskeletal nature of</p> <p>24 his injury that was described in the medical records.</p> <p>25 Q. Do you mean the Hillcrest records? I'm</p>

<p style="text-align: right;">Page 46</p> <p>1 trying -- which musculoskeletal injury are we talking</p> <p>2 about?</p> <p>3 A. Well, the paravertebral injury that's</p> <p>4 described in both the records really.</p> <p>5 Q. Okay. We might come back to that.</p> <p>6 All right. Let me ask it this way: Are</p> <p>7 you saying -- is this type of decrease in range of</p> <p>8 motion typical of a cervical epidural abscess, or is</p> <p>9 this typical of someone who is post motor vehicle</p> <p>10 accident?</p> <p>11 A. Well, it would be typical of a patient</p> <p>12 that has a musculoskeletal neck injury. He basically</p> <p>13 has a severe strain of neck muscles, and so you would</p> <p>14 typically see range of motion like this. He does</p> <p>15 have some ability to move his neck, but it's limited.</p> <p>16 Q. Okay.</p> <p>17 A. Well, I guess to complete your thought</p> <p>18 process there, so this would be more of a range of</p> <p>19 motion than you would typically see in a patient with</p> <p>20 a significant cervical spine epidural abscess.</p> <p>21 Q. And under "Impressions" Dr. Trinidad does</p> <p>22 not list an epidural cervical abscess; right?</p> <p>23 A. Correct. I think that's accurate.</p> <p>24 Q. And again we see a plan for naproxen</p> <p>25 twice a day; is that right?</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. Okay. So am I correct in assuming that</p> <p>2 means range of motion was restricted on all planes?</p> <p>3 Would you agree with me that's what that means?</p> <p>4 MR. BLAKEMORE: Object to form.</p> <p>5 A. I would not agree with you on that.</p> <p>6 Q. Okay. What does this mean to you?</p> <p>7 A. Well, if I'm reading this correctly and</p> <p>8 using what we know about the patient already, he's</p> <p>9 indicating that in the cervical and thoracic spine</p> <p>10 the range of motion is restricted in all planes.</p> <p>11 Q. Okay. So you believe that that No. 8</p> <p>12 range of motion is limited to the cervical and</p> <p>13 thoracic spine. Okay. I see that.</p> <p>14 And we can kind of -- on page 14 look at</p> <p>15 the top right. We can see substantially identical</p> <p>16 notation for October 26 of 2016. Is that fair?</p> <p>17 A. Yes.</p> <p>18 Q. And then on the next page there's another</p> <p>19 substantially identical notation dated October 24th</p> <p>20 of 2016. Is that fair?</p> <p>21 A. Hold on just a second.</p> <p>22 Q. It's easier for me. I've got it</p> <p>23 highlighted. I'm on page 15, if that helps.</p> <p>24 A. I know. I was just looking at something.</p> <p>25 Sorry. Could you ask your question again, please?</p>
<p style="text-align: right;">Page 47</p> <p>1 A. Well, that's No. 1 on the plan.</p> <p>2 Q. Right.</p> <p>3 A. There's more elements to it.</p> <p>4 Q. And then there's Robaxin and Norco; is</p> <p>5 that right?</p> <p>6 A. Correct.</p> <p>7 Q. And it looks like he says he'll</p> <p>8 reevaluate him in two weeks, the last part of the</p> <p>9 plan?</p> <p>10 A. That is element five of the plan.</p> <p>11 Q. Now will you please flip to Frank</p> <p>12 Greenhaw 13. What we were just talking about was the</p> <p>13 pain specialist, Dr. Trinidad, and now we're back to</p> <p>14 the chiropractor, Dr. Greenhaw. Again, all those</p> <p>15 records kind of got mixed in with one another; so I</p> <p>16 apologize for any confusion on that.</p> <p>17 Anyhow, we're back to the chiropractor</p> <p>18 records, and if you look at the very top on Frank</p> <p>19 Greenhaw page 13, it's dated October 31st. Do you</p> <p>20 see that?</p> <p>21 A. I do.</p> <p>22 Q. Do you see just below that where it says</p> <p>23 "ROM" and then it says "restricted" and then "All</p> <p>24 planes" appears to be circled?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. Sure thing. We've looked at two</p> <p>2 notations that say range of motion to the cervical</p> <p>3 and thoracic spine is restricted on all planes for</p> <p>4 two other dates. I'm just trying to establish that</p> <p>5 we see it for October 24th as well.</p> <p>6 A. Right. It would appear to me that all</p> <p>7 these different dates that we've looked at, at least</p> <p>8 in this upper right-hand corner, were just</p> <p>9 photocopied, and they all look the same.</p> <p>10 Q. Well, no, they don't. If you look at the</p> <p>11 next page, down at the bottom right you can see where</p> <p>12 someone has circled 67 and 68 and written "icepack"</p> <p>13 and "subzero," and that's not on page 15.</p> <p>14 A. Right. I just said in the upper right</p> <p>15 box, is what I referring to.</p> <p>16 Q. Well, they can't just photocopy the upper</p> <p>17 right corner of a page, can they?</p> <p>18 A. Sure, I mean, and fill in the rest of it.</p> <p>19 Anyway, I'm not saying it is. They all just look the</p> <p>20 same to me.</p> <p>21 Q. We're almost done. Just if we can agree</p> <p>22 that there's another substantially identical notation</p> <p>23 for October 24th, and then on the final page another</p> <p>24 one on the 21st. Is that fair? Whether they're</p> <p>25 photocopies or not, they're the same notation.</p>

<p style="text-align: right;">Page 50</p> <p>1 A. Yes.</p> <p>2 Q. Okay.</p> <p>3 And will you flip over to page 13,</p> <p>4 please. In the center, kind of the top center,</p> <p>5 there's a box labeled "Prognosis." Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And this page is dated October 31st,</p> <p>8 2016, about four days before Mr. Buchanan's</p> <p>9 incarceration; right?</p> <p>10 A. Correct.</p> <p>11 Q. And we see here that Dr. Greenhaw -- do</p> <p>12 we refer to chiropractors as doctors?</p> <p>13 A. Yes.</p> <p>14 Q. Dr. Greenhaw lists Mr. Buchanan's</p> <p>15 prognosis as fair, and then he circled below and</p> <p>16 says: "Patient decided not to follow through with</p> <p>17 recommended treatment; therefore, long-term prognosis</p> <p>18 is unknown."</p> <p>19 Is that fair?</p> <p>20 A. That's what it says.</p> <p>21 Can we take a brief pause just while I</p> <p>22 answer this?</p> <p>23 (Exhibit 7 was marked.)</p> <p>24 THE WITNESS: Okay. Thank you.</p> <p>25 Q. (BY MR. YOUNG) All right, Doctor. Now,</p>	<p style="text-align: right;">Page 52</p> <p>1 move his arm or arms?</p> <p>2 A. I don't see on here where he made that</p> <p>3 statement, but on the physical exam they did find</p> <p>4 weakness in his left arm.</p> <p>5 Q. Right. We've got weakness is listed</p> <p>6 several times, and body pain is listed several times,</p> <p>7 but I've read this cover to cover, and I didn't see</p> <p>8 anywhere where there was any mention of an inability</p> <p>9 to use his left arm or his right arm. I didn't see</p> <p>10 anywhere where he was listed as unable to use his</p> <p>11 legs.</p> <p>12 And my question is he seems to -- he</p> <p>13 alleges that he was unable to use his arms and his</p> <p>14 legs progressively throughout his stay at Tulsa</p> <p>15 County Jail. Is that a fair understanding of your --</p> <p>16 MR. ARTUS: Muskogee County Jail.</p> <p>17 Q. (BY MR. YOUNG) Sorry. Muskogee County</p> <p>18 Jail. Is that a fair understanding of the</p> <p>19 allegations in this case as you know?</p> <p>20 MR. BLAKEMORE: Object to form.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Yet the first hospital he goes to</p> <p>23 as soon as he gets out of Muskogee County Jail,</p> <p>24 there's no mention of an inability to use arms or</p> <p>25 legs. Is that fair?</p>
<p style="text-align: right;">Page 51</p> <p>1 I've shown you several sets records that until today</p> <p>2 you have never seen before; right?</p> <p>3 A. That's correct.</p> <p>4 Q. All right. And that's understandable.</p> <p>5 They weren't given to you. I don't expect you to go</p> <p>6 out and dig them up. I just wanted to get everything</p> <p>7 on the record.</p> <p>8 I'm going to move on to defense</p> <p>9 Exhibit 7, and I don't recall right this second</p> <p>10 whether this was in your list or not. These are the</p> <p>11 records from Wagner Community Hospital where</p> <p>12 Mr. Buchanan was transferred after his discharge,</p> <p>13 after he left Muskogee County Jail. Have you seen</p> <p>14 these? I think they're No. 18 on your list.</p> <p>15 A. Yes, I think so. Yes.</p> <p>16 Q. Take a minute.</p> <p>17 (Dr. Wilcox reviews document.)</p> <p>18 A. Okay.</p> <p>19 Q. Does reviewing these records refresh your</p> <p>20 memory, looking at these?</p> <p>21 A. Yes.</p> <p>22 Q. All right. When you reviewed these</p> <p>23 records just now or in preparing your report, did you</p> <p>24 see anywhere where Mr. Buchanan complained to any of</p> <p>25 the Wagner healthcare providers of an inability to</p>	<p style="text-align: right;">Page 53</p> <p>1 A. Yes, although they didn't really explore</p> <p>2 what this chief complaint of weakness really means.</p> <p>3 That certainly could be subsumed underneath that.</p> <p>4 Q. Okay. So we've got weakness, and</p> <p>5 certainly I appreciate that, but nothing about</p> <p>6 paralysis. Is that fair?</p> <p>7 MR. BLAKEMORE: Object to form.</p> <p>8 A. I don't see anything on here that says</p> <p>9 "paralysis."</p> <p>10 Q. Nothing about quadriplegia. Is that</p> <p>11 fair?</p> <p>12 A. I have yet to meet the patient that comes</p> <p>13 in and makes that diagnosis, but there's nothing on</p> <p>14 here that says that.</p> <p>15 Q. Okay. Well, there's nothing from the</p> <p>16 healthcare providers making those diagnoses either,</p> <p>17 is there?</p> <p>18 A. No.</p> <p>19 Q. There's weakness but not paraplegia and</p> <p>20 not quadriplegia. Is that fair?</p> <p>21 A. Correct.</p> <p>22 Q. Okay.</p> <p>23 Doctor, these aren't Bates stamped, but</p> <p>24 if you flip to the back -- I think it's the third</p> <p>25 page from the back -- there's a final radiology</p>

<p style="text-align: right;">Page 54</p> <p>1 report.</p> <p>2 A. I see that.</p> <p>3 Q. This is John -- this was requested by</p> <p>4 Dr. Casey Hannah, possibly Hannah Casey, and this is</p> <p>5 the report of a CT cervical spine without IV contrast</p> <p>6 done at Wagner Community Hospital on September 14th</p> <p>7 of 2016. Is that fair?</p> <p>8 A. Yes.</p> <p>9 Q. All right. At the bottom we've got it</p> <p>10 electronically signed by Anoop Duggal, MD?</p> <p>11 MR. ARTUS: You want to spell that for the</p> <p>12 court reporter?</p> <p>13 MR. YOUNG: That's fair, yeah. It's</p> <p>14 A-n-o-o-p, and then the last name is D-u-g-g-a-l.</p> <p>15 Q. (BY MR. YOUNG) I don't see it on here</p> <p>16 listed, but is it fair to assume that that's the</p> <p>17 radiologist?</p> <p>18 A. I would assume that it is.</p> <p>19 Q. No reason to disagree with that; right?</p> <p>20 And I'd like to call your attention to</p> <p>21 the last -- the first paragraph under "Findings," the</p> <p>22 last sentence. "There is a probable abscess in these</p> <p>23 prevertebral soft tissues."</p> <p>24 Is that fair?</p> <p>25 A. Yes. Let me read the whole thing.</p>	<p style="text-align: right;">Page 56</p> <p>1 prevertebral soft tissues.</p> <p>2 Q. Okay. Can we agree that Dr. Duggal does</p> <p>3 not put in his findings or impression a diagnosis of</p> <p>4 a cervical epidural abscess?</p> <p>5 A. Well, those words are not on this page,</p> <p>6 but the description of that process, and it's really</p> <p>7 a very fluid relationship to discitis, and so that</p> <p>8 description is here on the findings.</p> <p>9 Q. Well, okay. So the word "probable." It</p> <p>10 looks like Dr. Duggal was not entirely sure of that</p> <p>11 diagnosis. Is that fair?</p> <p>12 MR. BLAKEMORE: Object to form.</p> <p>13 A. Well, it --</p> <p>14 Q. Otherwise why would he use the word</p> <p>15 "probable"?</p> <p>16 A. Well, so that's pretty typical radiology</p> <p>17 language in the sense that he's seeing changes on the</p> <p>18 film, but, you know, you have to remember this is a</p> <p>19 quickie CT cervical spine with no contrast, and so</p> <p>20 the quality of this CT scan is not as good as what</p> <p>21 you could achieve. So he's seeing changes on the CT</p> <p>22 scan that are suggestive of abscess, but that's going</p> <p>23 to have to be further refined.</p> <p>24 Q. Okay.</p> <p>25 A. And, actually, if you look down below</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. Sure.</p> <p>2 So this finding -- sorry. Have you had</p> <p>3 time to look at it?</p> <p>4 A. Yes.</p> <p>5 Q. So this finding from a radiologist</p> <p>6 looking at a CT of the cervical spine, he was still</p> <p>7 unable to definitively diagnose a cervical epidural</p> <p>8 abscess in Mr. Buchanan. Is that fair?</p> <p>9 A. No, I don't think that's accurate.</p> <p>10 Q. It says there's a probable abscess. Am I</p> <p>11 wrong about that?</p> <p>12 A. Right, but you have to read the entire</p> <p>13 findings because they're -- this is sort of a</p> <p>14 situation where you have a couple of different</p> <p>15 elements going on. So you have destructive changes</p> <p>16 involving the C5-6 vertebrae, which typically occur</p> <p>17 with a discitis situation, which is sort of an</p> <p>18 infection of the disc, and then oftentimes what</p> <p>19 happens is when that becomes significant and there's</p> <p>20 enough destruction there the infection breaks out</p> <p>21 into the soft tissue.</p> <p>22 And so the way I read this is that he had</p> <p>23 a significant destructive change of C5-6, which would</p> <p>24 be interpreted as like a discitis situation that has</p> <p>25 progressed, and there is also an abscess in the</p>	<p style="text-align: right;">Page 57</p> <p>1 under his impression, he lists discitis and adjacent</p> <p>2 osteomyelitis as the likely etiology, which is</p> <p>3 exactly what I just talked about.</p> <p>4 Q. Okay. And you can appreciate to a</p> <p>5 layperson, though, that those don't sound the same as</p> <p>6 cervical epidural abscess; right?</p> <p>7 A. Right. That's why you have me.</p> <p>8 Q. And is it your testimony that those --</p> <p>9 those terms, and as Dr. Duggal has his findings and</p> <p>10 his impression, that he's essentially saying -- he's</p> <p>11 essentially diagnosing a cervical epidural abscess</p> <p>12 without using those words?</p> <p>13 A. Yes, other than the sense that, you know,</p> <p>14 an abscess is a very specific anatomic term, and so</p> <p>15 what he is seeing here is an infection of the disc</p> <p>16 and adjacent osteomyelitis; so it likely started as</p> <p>17 an abscess and then broke out and caused destructive</p> <p>18 changes and decompressed, and so they're not seeing,</p> <p>19 you know, basically a bubble on the film.</p> <p>20 Q. I mean, he uses another qualifier that</p> <p>21 "These findings are highly suspicious." Is this just</p> <p>22 typical radiology? Do they never let themselves be</p> <p>23 boxed in and never make definitive diagnoses? Is</p> <p>24 that your opinion?</p> <p>25 A. Correct. It's the art of radiology.</p>

<p style="text-align: right;">Page 58</p> <p>1 But, you know, to be fair to them, you know, the</p> <p>2 images are not perfect, and they certainly see</p> <p>3 suggestions, but you have to have tissue or a sample</p> <p>4 to make that diagnosis definitively.</p> <p>5 Q. So then would it be fair, based on what</p> <p>6 you just said, that they were unable to make a</p> <p>7 definitive diagnosis at Wagner Community Hospital?</p> <p>8 That's why they had to transfer him to -- I forget</p> <p>9 where he got transferred right now.</p> <p>10 MR. BLAKEMORE: Hillcrest.</p> <p>11 MR. YOUNG: Thank you.</p> <p>12 THE WITNESS: Well, I don't think that's</p> <p>13 exactly accurate.</p> <p>14 Q. (BY MR. YOUNG) Because they just said</p> <p>15 that they couldn't definitively diagnose it without a</p> <p>16 sample; so is it fair to say they had to transfer him</p> <p>17 somewhere else to get a definitive diagnosis?</p> <p>18 A. Again, I don't agree with you. So they</p> <p>19 were able to see that there is destructive change of</p> <p>20 the vertebra and that there is discitis and a likely</p> <p>21 abscess, and the reason for transfer is not</p> <p>22 necessarily just to make the diagnosis but to treat</p> <p>23 the condition that they saw very clearly on the CT</p> <p>24 scan.</p> <p>25 Q. Okay. So is it for both, for definitive</p>	<p style="text-align: right;">Page 60</p> <p>1 PDF.</p> <p>2 MR. BLAKEMORE: Yes.</p> <p>3 MR. YOUNG: In the interest of paper and</p> <p>4 travel.</p> <p>5 MR. BLAKEMORE: I appreciate that. I just</p> <p>6 wanted to clarify.</p> <p>7 Q. (BY MR. YOUNG) All right. On defense</p> <p>8 Exhibit 8, will you please turn to page 009. All</p> <p>9 right. I understand this to be the medical intake</p> <p>10 form preformed by Turn Key employee Nurse Rosemary</p> <p>11 Kotas on or about either November 3rd or</p> <p>12 November 4th, 2016. Does that sound right?</p> <p>13 A. Well, it's not signed or dated; so we're</p> <p>14 having to rely on additional information to come to</p> <p>15 that conclusion.</p> <p>16 Q. Well, I'll represent to you that we -- I</p> <p>17 didn't bring them today, but time sheets have been</p> <p>18 produced that represent that Ms. Kotas worked either</p> <p>19 on the night of the 3rd or the 4th. It was either</p> <p>20 one of those two days. I don't recall right now.</p> <p>21 But is it fair for purposes of today to assume that</p> <p>22 this was completed on November 3rd or 4th?</p> <p>23 A. I don't know how you would say that.</p> <p>24 Q. Well, she testified this is her</p> <p>25 handwriting.</p>
<p style="text-align: right;">Page 59</p> <p>1 diagnosis and for treatment?</p> <p>2 A. Of course.</p> <p>3 MR. YOUNG: Okay.</p> <p>4 This is a probably a good time for a</p> <p>5 break, actually.</p> <p>6 THE WITNESS: Okay.</p> <p>7 (Recess.)</p> <p>8 (Exhibits 8 and 9 were marked.)</p> <p>9 Q. (BY MR. YOUNG) Doctor, while we were on</p> <p>10 the break, I put in front of you what I've marked as</p> <p>11 defendant Exhibits 8 and 9. These are Bates stamped</p> <p>12 records from Mr. Buchanan's stay at Muskogee County</p> <p>13 Jail. It's DDR No. 1, page 001 through 042. And</p> <p>14 then separately I've attached what I've marked as</p> <p>15 defense Exhibit 9, and this is three independent</p> <p>16 pages Bates stamped DDR No. 30, 063, DDR No. 30, 151,</p> <p>17 and DDR 30, 515. Now that that's on the record,</p> <p>18 you've seen these records before; right?</p> <p>19 A. I have.</p> <p>20 MR. BLAKEMORE: And just for the record,</p> <p>21 this No. 30, DDR No. 30, these are pages taken out of</p> <p>22 like a 500-page PDF; right?</p> <p>23 MR. YOUNG: Correct.</p> <p>24 MR. BLAKEMORE: Okay.</p> <p>25 MR. YOUNG: These are excerpts of a larger</p>	<p style="text-align: right;">Page 61</p> <p>1 A. I do remember that, but nonetheless it is</p> <p>2 an unsigned assessment, and undated.</p> <p>3 Q. I understand that.</p> <p>4 All right. We can see that she noted</p> <p>5 Mr. Buchanan's allergies or lack thereof. Is that</p> <p>6 fair?</p> <p>7 A. Yes.</p> <p>8 Q. Checked for head lice. Asked whether</p> <p>9 there was any injuries due to -- attributable to his</p> <p>10 arrest and booking. Is that fair?</p> <p>11 A. Hold on.</p> <p>12 Q. I'm just kind of working my way down.</p> <p>13 A. Yes, that's correct.</p> <p>14 Q. All right. Look and see that vital signs</p> <p>15 were recorded; is that right?</p> <p>16 A. There were some vital signs recorded.</p> <p>17 Q. We've got temperature. We've got blood</p> <p>18 pressure, pulse, 02, and weight. Is that fair?</p> <p>19 A. Those are the ones that were recorded.</p> <p>20 Weight is not really a vital sign, though.</p> <p>21 Q. We've got medications listed. I've got</p> <p>22 anti-inflammatory, pain med, and muscle relaxer, and</p> <p>23 then there's a note to indicate that those are all</p> <p>24 post MVA 9/16/16. Is that a fair reading of that?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 62</p> <p>1 Q. All right. We've got to the right of</p> <p>2 that it says "Dr. Trinidad" and below that</p> <p>3 "Dr. Dallas Buck" and "Tulsa." Is that a fair</p> <p>4 reading?</p> <p>5 A. Yes.</p> <p>6 Q. Down towards the bottom we've got where</p> <p>7 it was asked whether or not he recently had a chronic</p> <p>8 cough, coughing up blood, lethargy, body weakness,</p> <p>9 more than 10 pounds of weight loss in the last month,</p> <p>10 loss of appetite, fever, and night sweats, and there</p> <p>11 is a circle with a line through it. I come to</p> <p>12 understand that that means that the answer to all of</p> <p>13 those questions is no. Is that fair?</p> <p>14 A. Well, I think that's poor documentation,</p> <p>15 but I suppose that's one way you could interpret</p> <p>16 that.</p> <p>17 Q. And you can appreciate that sometimes</p> <p>18 nurses are busy and they use shorthand to speed up</p> <p>19 the process of this type of notation. Is that fair?</p> <p>20 A. Sure.</p> <p>21 Q. Do doctors do that too?</p> <p>22 A. Sometimes.</p> <p>23 Q. We've got appearance noted as disheveled,</p> <p>24 behavior noted as appropriate, state of consciousness</p> <p>25 noted as alert, breathing noted as unremarkable, and</p>	<p style="text-align: right;">Page 64</p> <p>1 A. Well, they probably are, yes.</p> <p>2 Q. Okay. We're six to seven weeks,</p> <p>3 approximately, post MVA. Do you think his ribs are</p> <p>4 still broken at this time?</p> <p>5 A. Yes. They're healing, but they haven't</p> <p>6 completely healed.</p> <p>7 Q. Okay. What about the collapsed lungs?</p> <p>8 Does he still have the pneumothorax?</p> <p>9 A. Hard to know since no assessment was</p> <p>10 done, but likely not.</p> <p>11 Q. Do you think they would have discharged</p> <p>12 him from St. John's if he still had the same -- if he</p> <p>13 still had a collapsed lung?</p> <p>14 A. Well, sometimes they do, and sometimes</p> <p>15 it -- especially with rib fractures and traumatic</p> <p>16 collapsed lungs it will reoccur. So...</p> <p>17 Q. Well, we just went through records from</p> <p>18 October 14th; thereby, when Mr. Buchanan returned to</p> <p>19 the St. John's ER, several visits with a</p> <p>20 chiropractor, and a visit with a pain management</p> <p>21 specialist, and none of them noted anything about</p> <p>22 broken ribs or a collapsed lung. Is that fair?</p> <p>23 A. Yes.</p> <p>24 Q. If you like, you're welcome to go back</p> <p>25 through all those records, but I think it's a pretty</p>
<p style="text-align: right;">Page 63</p> <p>1 then for ease of movement she wrote in in the space</p> <p>2 below "Sat on mat R/T". I've come to understand that</p> <p>3 means "related to." Is that fair?</p> <p>4 A. I suppose.</p> <p>5 Q. Would you have any reason to disagree</p> <p>6 with that?</p> <p>7 A. No.</p> <p>8 Q. Okay. So "Sat on mat related to." And</p> <p>9 then the up arrow, is that fair to say that means</p> <p>10 increase?</p> <p>11 A. Probably.</p> <p>12 Q. Okay. "Sat on mat related to an increase</p> <p>13 discomfort in movement."</p> <p>14 Is that a fair reading of that note?</p> <p>15 A. I think you did a good job.</p> <p>16 Q. Thanks.</p> <p>17 On page 10 down below "Other Comments or</p> <p>18 Physical Findings" there's a note that says: "Inmate</p> <p>19 states he has broken ribs, collapsed lung, burnt</p> <p>20 fingers and neck problems. MVA 9/16/16."</p> <p>21 Is that fair?</p> <p>22 A. Yes.</p> <p>23 Q. Do you have any opinion or position one</p> <p>24 way or the other on whether or not Mr. Buchanan's</p> <p>25 ribs were still broken as of the date of this intake?</p>	<p style="text-align: right;">Page 65</p> <p>1 accurate statement of the diagnoses in those records.</p> <p>2 Okay.</p> <p>3 And I'll call your attention to the other</p> <p>4 exhibit, Exhibit 9. Up at the top of this page it</p> <p>5 says, "Sick Call 11/4/16," and then about halfway</p> <p>6 down we see where it says, "Buchanan, James," and</p> <p>7 next to it there's a number 6. Is that fair?</p> <p>8 A. Yes.</p> <p>9 Q. Do you have any understanding as to who</p> <p>10 wrote this -- who wrote this?</p> <p>11 A. I'm not sure that I -- I remember it was</p> <p>12 discussed in the depositions. I can't remember which</p> <p>13 one discussed writing this, though.</p> <p>14 Q. Okay. Would you agree with me that it</p> <p>15 was a member of the Turn Key staff?</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 Okay. Back to Exhibit 8. If you would</p> <p>19 please flip over to page 11. Okay. We've got a page</p> <p>20 labeled as "Provider Orders" for James Buchanan. In</p> <p>21 the top left-hand corner it says "11/4/16," and then</p> <p>22 under "Provider Orders" it says, "Torb: Dr. Cooper,</p> <p>23 Naproxen 500 mg 1 PO BID x 30 days."</p> <p>24 Do you think that's a fair reading of</p> <p>25 that note?</p>

<p style="text-align: right;">Page 66</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And to a layperson that means</p> <p>3 Dr. Cooper ordered Mr. Buchanan to be on naproxen two</p> <p>4 times a day for 30 days. Is that fair?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And that note to the right was</p> <p>7 signed by D. Ayers, and I can represent to you that</p> <p>8 that was most likely an employee named Delana Ayers,</p> <p>9 LPN. Is that fair?</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 Flip back to page 7, please. This is the</p> <p>13 medical administration record for James Buchanan.</p> <p>14 The name at the bottom left-hand corner is cut off,</p> <p>15 but I think we could probably all agree that it says</p> <p>16 "James Buchanan." And this is an accounting, from my</p> <p>17 understanding, of the delivery of Mr. Buchanan's</p> <p>18 Naproxen during his stay at Muskogee County Jail.</p> <p>19 Any reason to disagree with that?</p> <p>20 A. No.</p> <p>21 Q. Okay. We can see that most days this</p> <p>22 shows that he received it twice a day with the</p> <p>23 exception of the fourth, which would have been</p> <p>24 shortly after his intake, and then it looks like on</p> <p>25 the 13th for whatever reason he didn't get it in the</p>	<p style="text-align: right;">Page 68</p> <p>1 call list for what somebody perceives to be shoulder</p> <p>2 pain, but there's no progress note or assessment that</p> <p>3 would document that in a way that would allow you to</p> <p>4 come to that conclusion.</p> <p>5 Q. Well, we know that he had previously gone</p> <p>6 to a chiropractor complaining of, amongst other</p> <p>7 things, shoulder pain; right?</p> <p>8 A. Right.</p> <p>9 Q. So is it not fair to assume that he</p> <p>10 reported shoulder pain that generated this note?</p> <p>11 A. It's not unreasonable.</p> <p>12 Q. Okay.</p> <p>13 Okay. Will you flip in that same exhibit</p> <p>14 to the final page, DDR 30, 515. This page is -- it's</p> <p>15 blacked out except for the name James Buchanan just</p> <p>16 above the center of the page, and next to his name</p> <p>17 there is a date 11/11/16; is that right?</p> <p>18 A. Correct.</p> <p>19 Q. All right. I'm going to tell you what I</p> <p>20 think that the notation under "Complaint" means, and</p> <p>21 you let me know if you disagree. Decreased range of</p> <p>22 motion, upper and lower extremities. Neck limited</p> <p>23 range of motion and pain. Is that fair?</p> <p>24 A. I think that is one reasonable</p> <p>25 interpretation of that.</p>
<p style="text-align: right;">Page 67</p> <p>1 morning, the a.m. delivery. Is that fair?</p> <p>2 A. That's what is suggested by this</p> <p>3 document.</p> <p>4 Q. Okay. Do you have any reason to believe</p> <p>5 that this document is not accurate?</p> <p>6 A. Well, there's a little lack of clarity.</p> <p>7 Mr. Buchanan in his deposition indicated that he</p> <p>8 received medication once a day and not twice a day,</p> <p>9 and I don't really quite know how to interpret that</p> <p>10 discrepancy.</p> <p>11 Q. Okay.</p> <p>12 Look back at defendants' Exhibit 9. I've</p> <p>13 got another Sick Call List. It's handwritten. And</p> <p>14 again about halfway down that page we've got James</p> <p>15 Buchanan's name, and next to his name it says</p> <p>16 "shoulder pain." Is that fair?</p> <p>17 MR. BLAKEMORE: Where are you?</p> <p>18 MR. YOUNG: Sorry. It's the next page,</p> <p>19 defense Exhibit 9, the second page. It's No. 151.</p> <p>20 THE WITNESS: Mm-hmm.</p> <p>21 Q. (BY MR. YOUNG) Would you agree with me</p> <p>22 that that indicates James Buchanan reported shoulder</p> <p>23 pain?</p> <p>24 A. Well, it's a little hard to know what to</p> <p>25 interpret from that. He's on, apparently, a sick</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Okay. And on the far right side, top</p> <p>2 right, it says "Schedule," and next to Mr. Buchanan's</p> <p>3 name it says "11/15/16"; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. And then it says "OR'd admitted," I</p> <p>6 believe is what that notation next to it means. Is</p> <p>7 that right?</p> <p>8 A. I guess so. What does "OR'd" mean?</p> <p>9 Q. My understanding, and anybody is welcome</p> <p>10 to correct me, is that means that he was released on</p> <p>11 his own recognizance because he was in a hospital.</p> <p>12 A. Okay. That doesn't mean they took him to</p> <p>13 the operating room?</p> <p>14 Q. It's not -- my understanding is that that</p> <p>15 does not mean the operating room. I think it's "own</p> <p>16 recognizance." Anybody is welcome to correct me if</p> <p>17 they think I've got that wrong. All right.</p> <p>18 On defense Exhibit 8 let's go over to</p> <p>19 page 12. This is a progress note authored by</p> <p>20 Nurse Katie McCullar at approximately 11:27 a.m. on</p> <p>21 November 14th, 2016. Does that sound right?</p> <p>22 A. Yes.</p> <p>23 Q. All right. It says she was called to the</p> <p>24 inmate's pod because "patient could not walk. When I</p> <p>25 arrived to pod, inmate was sitting at his table with</p>

<p style="text-align: right;">Page 70</p> <p>1 his head down. Inmate complained of worsening pain 2 and inability to move lower extremities. Also 3 complained of tingling in the legs." 4 Then Nurse McCullar writes that she 5 notified Dr. Cooper, who instructed her to place the 6 inmate on the provider list for the following week, 7 and she requested records from Mr. Buchanan's recent 8 hospitalization and she said she will continue to 9 monitor. 10 Did I get that right? 11 A. Yes. 12 Q. Okay. 13 And on the following page we've got a 14 progress note authored on the evening of 15 November 14th, 2016, by what I'll represent to you is 16 Rosemary Kotas. Her note says -- I'm going to 17 paraphrase here. She was called to the pod. 18 Mr. Buchanan was sitting at the table with his head 19 on the table. He presented with a decreased range of 20 motion in all extremities, decreased range of motion 21 to neck, complained of 10/10 pain. 22 Is that fair? 23 A. That's what I would read that as. 24 Q. All right. She took vitals, she got 25 heart rate, BP, and oxygen; is that right?</p>	<p style="text-align: right;">Page 72</p> <p>1 employee. Do you have any reason to disagree with 2 that? 3 A. Well, I didn't count them; so I don't 4 really know, but -- 5 Q. That's fair. Does that sound about 6 right? 7 A. Well, sure. I mean, you'd have to go 8 back and actually do the counting to say for sure, 9 but it doesn't seem out of range. 10 Q. Can you give me the benefit of the doubt 11 and say I'm probably within two or three of my 12 counting? 13 Can you tell from those records, did he 14 ever go -- did Mr. Buchanan ever go more than 15 24 hours without an interaction with a Turn Key 16 employee? 17 A. I'd have to mark it out over time. I 18 couldn't say just based on the jumping around in 19 records that we did. 20 Q. Okay. Would you agree with me that his 21 complaint during his intake assessment, which was an 22 increased discomfort with movement -- is that 23 consistent with the complaints that we saw with 24 Dr. Greenhaw, the chiropractor, and Dr. Trinidad, the 25 pain management specialist?</p>
<p style="text-align: right;">Page 71</p> <p>1 A. Yes. 2 Q. She states that the patient had no 3 control over urinating and had urinated on himself 4 and the floor; is that right? 5 A. Yes, I think so. That's correct. 6 Q. She says he's currently on Naproxen twice 7 daily, and she again notified Dr. Cooper, and 8 Dr. Cooper said to send him to the ER. Is that a 9 fair summation of the rest of that -- or summation of 10 that note? 11 A. Yes. 12 Q. And then I believe that says: EMSA 13 arrived and transported Mr. Buchanan to Wagner ED as 14 Estar is on divert, which I guess means Estar wasn't 15 taking patients. I'll be honest. I can't make out 16 what the last sentence says right now. But up to 17 that, is that a fair summation of Nurse Kotas' note? 18 A. Yes, up to the notification of the 19 diversion. 20 Q. All right. Dr. Wilcox, we just kind of 21 poked through Mr. Buchanan's records from his stay at 22 Muskogee County Jail from November 3rd, 2016, to 23 November 14th, 2016. By my count, assuming that the 24 MAR, Medical Administration Record, is correct, that 25 was 26 interactions which he had with a Turn Key</p>	<p style="text-align: right;">Page 73</p> <p>1 A. Yes. 2 Q. Would you agree with me that just as 3 Dr. Trinidad and the physicians at the St. John's ER 4 on October 14th -- just as they prescribed 5 Mr. Buchanan Naproxen, Dr. Cooper also prescribed 6 Mr. Buchanan Naproxen? 7 MR. BLAKEMORE: Object to form. 8 A. I would agree with that with the notation 9 that the other clinical entities prescribed other 10 things in addition to Naproxen. 11 Q. Well, and that's -- that's a good point. 12 In your experience, are there certain medications 13 that are not on formularies for -- in jails and in 14 prisons? 15 A. Well, I don't know exactly what you mean 16 by that. 17 Q. Okay. 18 A. Formularies are common in jails and 19 prisons. 20 Q. How often are opiates available to 21 inmates for pain? 22 MR. BLAKEMORE: Object to form. 23 A. Well, if they're medically necessary for 24 the care of the prisoner, it should be available to 25 all prisoners.</p>

<p style="text-align: right;">Page 74</p> <p>1 Q. And in what situations would that be -- 2 what types of conditions would be medically necessary 3 for opiates in a correctional setting? 4 A. Patients who are experiencing pain at 5 levels where opiates would be necessary to control 6 that pain. 7 Q. Okay. It's been described to me before 8 that those types of situations typically involve bad 9 burns or, you know, very severe bone breaks and 10 things like that. Am I way off on that, or does that 11 sound about right? 12 MR. BLAKEMORE: Object to form. 13 A. Well, you know, the number of conditions 14 where patients can experience pain that would require 15 opiates to treat is huge. 16 Q. Okay. 17 A. The two limited conditions that you 18 talked about certainly could be on that list 19 depending upon severity, but you would really have to 20 do an appropriate assessment of the patient to 21 determine the level of intervention necessary. 22 Q. All right. So you agreed that -- I'm 23 sorry. I'm skipping ahead. 24 Would you agree with me that the shoulder 25 pain notation from the September 6, 2016 sick call --</p>	<p style="text-align: right;">Page 76</p> <p>1 excerpts of James Buchanan, the plaintiff's 2 deposition. Again in the interest of paper and 3 travel, I didn't bring the whole thing. You read 4 Mr. Buchanan's deposition transcript, though; right? 5 A. I have. 6 Q. Okay. You mentioned a moment ago that 7 there might be some discrepancy in the medical 8 administration record based on Mr. Buchanan's 9 recollection of his -- the amount of times per day he 10 received pills while he was incarcerated. Is that 11 fair? 12 A. Yes. 13 Q. The record reflects twice a day, but 14 Mr. Buchanan remembers once a day. Is that fair? 15 A. That's correct. 16 Q. If you would, take a look at defendant 17 Exhibit 10. I'm on page 61, line 23. It says: "So, 18 of all these 13 times in the jail, the one that you 19 can recall is just this last time." 20 Plaintiffs objected. 21 On the next page Mr. Artus asks: "Is 22 that correct?" 23 And Mr. Buchanan says: "Correct." 24 Now, I understand that to mean that 25 Mr. Buchanan has been incarcerated approximately</p>
<p style="text-align: right;">Page 75</p> <p>1 that complaint is consistent with the complaints that 2 Mr. Buchanan had made to Dr. Trinidad and 3 Dr. Greenhaw? 4 A. Yes, I would agree that that chief 5 complaint was also in those clinical encounters. 6 Q. Okay. And the note from November 11th, 7 2016, which is DDR 30, 515, and we agreed that it 8 says: Decreased range of motion upper and lower 9 extremities. Neck limited range of motion and pain. 10 I think you agreed that that was one acceptable 11 interpretation of that note. Would you agree that 12 that's consistent with the complaints Mr. Buchanan 13 made to Dr. Greenhaw and Dr. Trinidad? 14 A. Yes, I would agree that those chief 15 complaints are similar. 16 Q. Okay. And would you agree that in 17 receiving Naproxen he received at least substantially 18 similar treatment, even if it wasn't opioids or 19 muscle relaxers? I'm sorry. Yeah, that's right. 20 A. I would agree that Naproxen was used both 21 prior to jail and while he was in jail. 22 Q. All right. 23 (Exhibit 10 was marked.) 24 Doctor, I'm going to hand you defense 25 Exhibit 10, and I'll represent to you that these are</p>	<p style="text-align: right;">Page 77</p> <p>1 13 times, and he testified that of all of those he 2 only remembers a single incarceration. Is that a 3 fair interpretation of that testimony? 4 A. I think so. I mean, this document 5 obviously is contextually referencing something on 6 pages that are prior to this -- 7 Q. Right. 8 A. -- so in that sense it's kind of out of 9 context, but I think that is one probable 10 interpretation of that statement. 11 Q. And I appreciate you're not getting the 12 full context and that that's important, but the 13 transcript essentially says from Mr. Artus the record 14 shows you have been arrested 13 times, and 15 Mr. Buchanan says, "Well, I only remember the last 16 one." And I'm just asking do you think that's a fair 17 interpretation of that testimony? 18 A. I think so. 19 Q. Okay. Thank you. 20 If you would, please flip a few pages. 21 It's going to be page 118, and I'm going to read down 22 at the bottom. It's line 21. It says: "When 23 you" -- excuse me. "When you were released from the 24 St. John's Hospital, did you have any kind of orders 25 to go see somebody else after that, a specialist or</p>

<p style="text-align: right;">Page 78</p> <p>1 anything for your neck? Or did they just say" --</p> <p>2 And Mr. Buchanan's response was "No."</p> <p>3 Is that fair?</p> <p>4 MR. BLAKEMORE: Object to form.</p> <p>5 A. This intermittent page thing is getting</p> <p>6 to me. So, yes, based on what is on this one limited</p> <p>7 page, you've read that correctly.</p> <p>8 Q. Okay. We've already seen the discharge</p> <p>9 records from St. John's, right, and we saw that he</p> <p>10 was recommended to follow up with his neurosurgeon,</p> <p>11 Dr. Rapacki, and to follow up with his -- well, to</p> <p>12 follow up with Dr. Dallas Buck. We saw that earlier.</p> <p>13 Is that fair?</p> <p>14 A. We did.</p> <p>15 Q. All right. And then we also saw that,</p> <p>16 when he went back to the ER two weeks later, they</p> <p>17 again recommended that he follow up with Dr. Buck.</p> <p>18 Do you remember seeing that?</p> <p>19 A. I do not remember seeing that.</p> <p>20 Q. Okay. Well, we can go back there if</p> <p>21 you'd like. We certainly remember that when he was</p> <p>22 discharged from the St. John's ICU on September 30th</p> <p>23 they recommended that he follow up with Dr. Rapacki</p> <p>24 and Dr. Buck. Fair?</p> <p>25 A. Not correct.</p> <p style="text-align: right;">Page 79</p> <p>1 Q. I'm sorry. Did you say, "Not correct"?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. Thanks.</p> <p>4 A. I said, "Not correct."</p> <p>5 Q. Okay. What's not correct?</p> <p>6 A. Well, Dallas Buck is a nurse</p> <p>7 practitioner, not a doctor.</p> <p>8 Q. Fair enough. They said to follow up with</p> <p>9 Nurse Practitioner Buck and Dr. Rapacki.</p> <p>10 My point is that, again, Mr. Buchanan</p> <p>11 testified that that didn't happen, and it appears to</p> <p>12 me that he doesn't remember that. Is that -- is</p> <p>13 that -- is that fair?</p> <p>14 A. That may be how to interpret that. He</p> <p>15 did go see other clinicians, though --</p> <p>16 Q. He did.</p> <p>17 A. -- so, I mean, it's not as if it would be</p> <p>18 fair to suggest that he did not pursue any follow-up.</p> <p>19 Q. I'm not suggesting that. This says:</p> <p>20 "Did you have any kind of orders to go see somebody</p> <p>21 else?"</p> <p>22 And he said: "No."</p> <p>23 Is that fair?</p> <p>24 A. Correct.</p> <p>25 Q. Will you please flip to page 197. Down</p>	<p style="text-align: right;">Page 80</p> <p>1 at line 19 it says: "To my knowledge, I don't</p> <p>2 specifically remember when I started -- started to</p> <p>3 lose the feelings in my arm."</p> <p>4 Do you remember reading that in</p> <p>5 Mr. Buchanan's deposition?</p> <p>6 A. Yes.</p> <p>7 Q. And I'll represent to you this was</p> <p>8 shortly after he testified that he remembered it very</p> <p>9 well because it was engrained in his memory; and then</p> <p>10 when he was questioned about it, he admitted that he</p> <p>11 does not specifically remember the timing of the loss</p> <p>12 of feeling in his arms. And, again, it looks to me</p> <p>13 like Mr. Buchanan's memory of the time frame at issue</p> <p>14 during his incarceration is at least flawed. Is that</p> <p>15 fair?</p> <p>16 MR. BLAKEMORE: Object to form.</p> <p>17 A. Well, it's certainly possible. We see</p> <p>18 memory issues in patients with traumatic brain</p> <p>19 injuries fairly routinely, and we can't really fault</p> <p>20 them for that.</p> <p>21 Q. Is it your position that Mr. Buchanan had</p> <p>22 a traumatic brain injury?</p> <p>23 A. He likely did. He had a pretty</p> <p>24 significant motor vehicle accident, and they</p> <p>25 frequently will have concussions or a traumatic brain</p> <p style="text-align: right;">Page 81</p> <p>1 injury as a part of that.</p> <p>2 Q. Is there a concussion diagnosis in any of</p> <p>3 the records that you've seen?</p> <p>4 A. No.</p> <p>5 Q. Is there a traumatic brain injury in any</p> <p>6 of the records that you have seen?</p> <p>7 A. No.</p> <p>8 Q. Okay. And you haven't examined him</p> <p>9 personally; right?</p> <p>10 A. Correct.</p> <p>11 Q. All right.</p> <p>12 Many of the opinions in your report seem</p> <p>13 to be based on Mr. Buchanan's recitation of the care</p> <p>14 and treatment that he received during his</p> <p>15 incarceration. Is that a fair statement?</p> <p>16 A. Yes, it is.</p> <p>17 Q. Okay. Well, given what we just went</p> <p>18 through, is it also fair to say that maybe his</p> <p>19 recitation is at least incomplete?</p> <p>20 A. That's possible. I would be clear that</p> <p>21 using his recitation of the events is not the most</p> <p>22 preferable way to reconstruct what happened, but</p> <p>23 given the rather shocking paucity of medical records</p> <p>24 in the system, you couldn't really rely upon those to</p> <p>25 do that.</p>
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<p style="text-align: right;">Page 82</p> <p>1 Q. Well, is it fair to say that if your</p> <p>2 report or portions of your report are based on</p> <p>3 Mr. Buchanan's memory and recitation of his care,</p> <p>4 then to the extent that his memory is flawed then</p> <p>5 possibly your report would be, through no fault of</p> <p>6 your own, similarly flawed?</p> <p>7 MR. BLAKEMORE: Object to form.</p> <p>8 A. I would disagree with that in the sense</p> <p>9 that the elements that he reported were correlated</p> <p>10 with some of the elements that are available in the</p> <p>11 medical record, and it also correlates with what was</p> <p>12 ultimately found to be his diagnosis; so to me those</p> <p>13 are all internally consistent.</p> <p>14 MR. YOUNG: All right. We might want to</p> <p>15 take a break here. Is everybody okay with that?</p> <p>16 MR. BLAKEMORE: That's fine.</p> <p>17 (Recess.)</p> <p>18 (Exhibit 11 marked.)</p> <p>19 MR. YOUNG: Back on record.</p> <p>20 Q. (BY MR. YOUNG) All right. Dr. Wilcox,</p> <p>21 we took a short break, and I gave -- you took the</p> <p>22 opportunity to review the defendants' expert report</p> <p>23 authored by Dr. L'Heureux; is that right? At least</p> <p>24 certain paragraphs?</p> <p>25 A. Well, yes. I reviewed the paragraphs</p>	<p style="text-align: right;">Page 84</p> <p>1 that contrast with Dr. L'Heureux's opinions in this</p> <p>2 case?</p> <p>3 MR. BLAKEMORE: Object to the form.</p> <p>4 A. Well, I don't know that I can really</p> <p>5 answer. Having not read the entire report, I don't</p> <p>6 know that I know all of his opinions at this point in</p> <p>7 time.</p> <p>8 Q. Okay.</p> <p>9 A. But, certainly, if he has an opinion that</p> <p>10 I disagree with, I will let you know.</p> <p>11 Q. Okay. And what I was trying to establish</p> <p>12 was that he has a specialty in orthopedic surgery.</p> <p>13 This case involves an epidural spinal cervical</p> <p>14 abscess. He's reviewed records you have not. And my</p> <p>15 question was do you feel like you are in a position</p> <p>16 to offer causation opinions counter to his opinions?</p> <p>17 MR. BLAKEMORE: Wait for one second.</p> <p>18 I want to object on one ground. That's</p> <p>19 beyond the scope of what -- we didn't ask him to do a</p> <p>20 rebuttal report to Dr. L'Heureux; so to that extent</p> <p>21 it's beyond the scope of what he's been asked to do.</p> <p>22 But other than that, with that caveat,</p> <p>23 answer.</p> <p>24 THE WITNESS: Well, again, I have not read</p> <p>25 the entire report. I can't really say at this moment</p>
<p style="text-align: right;">Page 83</p> <p>1 that you had called out as well as a few others that</p> <p>2 were close by.</p> <p>3 Q. Right. I just didn't want to spring the</p> <p>4 whole thing on you and not give you time to look at</p> <p>5 it. Now that you've had a moment, I want to discuss</p> <p>6 some of the thoughts. Before that, so Dr. L'Heureux</p> <p>7 is a board certified orthopedic surgeon with a</p> <p>8 fellowship specialty training in spine surgery. He's</p> <p>9 had a continuous orthopedic surgical practice with an</p> <p>10 emphasis on orthopedic surgery of the spine for over</p> <p>11 21 years. He's an active fellow in the American</p> <p>12 Academy of Orthopedic Surgeons and an active fellow</p> <p>13 in the American College of Surgeons.</p> <p>14 Dr. Buchanan -- I'm sorry. Dr. L'Heureux</p> <p>15 was given the records from St. John's, the two-week</p> <p>16 ICU incarceration -- the two-week ICU -- two weeks in</p> <p>17 ICU Mr. Buchanan spent. He reviewed the imaging</p> <p>18 records from that stay. He reviewed the ER records</p> <p>19 from when Mr. Buchanan returned two weeks later. He</p> <p>20 reviewed the chiropractic records that we discussed.</p> <p>21 He had time to review Dr. Trinidad's records.</p> <p>22 Given all that, Dr. L'Heureux's</p> <p>23 specialty, his experience, his certifications, and</p> <p>24 all of the records that he has to review -- he had to</p> <p>25 review, do you intend to offer causation opinions</p>	<p style="text-align: right;">Page 85</p> <p>1 in time. But I know all of his opinions. It is</p> <p>2 possible and probably even likely that there may be</p> <p>3 opinions that fall into the general category of</p> <p>4 medicine that we talked about earlier that sort of all</p> <p>5 doctors participate in where I may disagree with him,</p> <p>6 and if that's the case then I will let you know.</p> <p>7 Q. (BY MR. YOUNG) Okay. Would you agree</p> <p>8 with me that in the area of orthopedic spinal surgery</p> <p>9 he's more qualified to opine -- to make opinions than</p> <p>10 you are?</p> <p>11 A. Yes, and I would defer to the</p> <p>12 neurosurgeon who is also an expert in this case to</p> <p>13 weigh in on that as well.</p> <p>14 Q. Okay. So with regards to the spinal</p> <p>15 surgery, the surgeries, James Buchanan's epidural</p> <p>16 abscess, would you say that's fair to leave that to</p> <p>17 Dr. L'Heureux and Dr. Baird?</p> <p>18 MR. BLAKEMORE: Object to form.</p> <p>19 A. Likely. Again, if there are opinions</p> <p>20 that fall into the general realm of medicine that I</p> <p>21 disagree with, I will probably let you know about</p> <p>22 that.</p> <p>23 Q. Okay. With that let's jump into the</p> <p>24 report. As you noted, I often go out of order. Last</p> <p>25 full paragraph page 66. I'll sum it up and say that</p>

<p style="text-align: right;">Page 86</p> <p>1 Dr. L'Heureux opined that, if Mr. Buchanan had gotten 2 to the hospital on November 3rd rather than November 3 14th, it would not have made a difference in his 4 outcome. Is that a fair summation of this paragraph? 5 A. It is a fair summary of his opinion. 6 Q. And do you have any reason to disagree 7 with that opinion? 8 A. No. I think I would defer to the 9 neurosurgeon on that. 10 Q. Okay. Let's go over to page 60. There's 11 a paragraph in the middle of the page that reads: 12 "Spinal infections such as the one Mr. Buchanan had, 13 along with spinal epidural abscesses are very rare 14 and represent approximately 1 to 2 patients out of 15 every 10,000 hospital admissions." 16 Do you have any reason to disagree with 17 that opinion? 18 A. Well, is that an opinion? It doesn't 19 really read as an opinion. 20 Q. Are you aware of any literature to the -- 21 that contradicts that? 22 A. No, but I also -- my, I guess, overall 23 objection would be that he does not list a citation 24 for what is a factual statement. 25 Q. And that's fair. As we sit here right</p>	<p style="text-align: right;">Page 88</p> <p>1 over the course of four visits to the chiropractor, 2 and then with the pain management specialist, 3 Dr. Trinidad, there were reports of increased 4 discomfort in movement and neck pain. 5 And I guess my question to you is would 6 you agree that because of the difficulty and the 7 rareness of a cervical epidural abscess that those 8 physicians all failed to diagnose a cervical epidural 9 abscess? 10 A. Oh, I would disagree with you on that. I 11 don't think that he had a cervical epidural abscess 12 at the time that he presented to those clinicians. 13 Q. Were those symptoms that I just listed, 14 the pain and the loss of range of motion -- could 15 those be considered neurological symptoms? 16 MR. BLAKEMORE: Object to form. 17 A. Well, pain is a neurologic symptom, yes, 18 but it is very nonspecific, and it is not nearly -- 19 well, it is not what is really considered to be 20 neurologic symptoms like you would discuss with an 21 epidural abscess. More specifically, the 22 neurological symptoms that typically present are 23 numbness, tingling, weakness, loss of function. 24 Q. So am I correct in stating that when 25 Dr. L'Heureux says that a delay in the diagnosis of</p>
<p style="text-align: right;">Page 87</p> <p>1 now, you don't have any reason to believe that that's 2 wrong. Is that fair? 3 A. No, but I also don't have any reason to 4 believe that that's right. 5 Q. All right. 6 A. So what's the citation? It's easy enough 7 to check. 8 Q. All right. Two paragraphs down 9 Dr. Buck -- I'm sorry -- Dr. L'Heureux specializes in 10 orthopedic spinal surgery. It says that, "A delay in 11 the diagnosis of spinal epidural abscess is the rule 12 not the exception. Approximately 70 percent to 13 75 percent of patients diagnosed with spinal epidural 14 abscess are diagnosed after the onset of neurologic 15 symptoms." 16 Do you disagree with that? 17 A. Well, I disagree with what he says there. 18 First of all, you know, again, there's no citation 19 for his statistic, but his indication that this is a 20 delay I don't think is really accurate. Most 21 patients who present with epidural abscesses, the 22 presenting symptom is a neurological change, and 23 that's not a delay. 24 Q. Okay. Well, we saw that at the ER on 25 October 14th, 2016, and then again at Dr. Greenhaw</p>	<p style="text-align: right;">Page 89</p> <p>1 an epidural abscess is the rule not the exception 2 that you would not defer to him on that opinion? 3 MR. BLAKEMORE: Object to form. 4 A. Well, I wouldn't say it in those -- in 5 that way. I think the -- many spinal epidural 6 abscesses are diagnosed in a timely fashion based on 7 the emergence of neurologic symptoms; so I don't 8 consider it to be a delay. 9 Q. When you say you don't consider it to be 10 a delay, are you specifically talking about James 11 Buchanan or are you speaking generally? 12 A. Well, really both. You know, his 13 language in the use of the word "delay," you know, 14 really you have to be careful about that because, you 15 know, what's your starting point for when you 16 consider the spinal epidural abscess to, you know, 17 begin. Is it the very first bacteria that sets up 18 that starts this process? Because everything after 19 that would be considered a delay, and I don't think 20 that's what he means. At least that's not the way I 21 would interpret that as the presentation. So it 22 takes a little while for the infection to grow to the 23 point that it is clinically evident. 24 Q. Okay. It takes a while for the infection 25 to grow to the point it's clinically evident. Could</p>

<p style="text-align: right;">Page 90</p> <p>1 that not mean that because of the time that it takes</p> <p>2 the diagnosis is often delayed until -- the diagnosis</p> <p>3 is delayed and not immediately diagnosed. I'm</p> <p>4 trying -- is that fair?</p> <p>5 A. Right. But you have to specify</p> <p>6 "delayed." With respect to what?</p> <p>7 Q. The onset of neurological symptoms.</p> <p>8 A. No, typically the diagnosis is not</p> <p>9 delayed at the time the neurologic symptoms present.</p> <p>10 Prior to the presentation of those neurologic</p> <p>11 symptoms, the diagnosis is probably not made.</p> <p>12 Q. What type of neurologic symptoms are we</p> <p>13 talking about?</p> <p>14 A. Well, typically focal symptoms in the</p> <p>15 form of like I talked about earlier -- numbness,</p> <p>16 tingling, weakness, loss of function, loss of</p> <p>17 sensation, loss of nerve function like becoming</p> <p>18 incontinent.</p> <p>19 Q. All right. Slip over to page 64. The</p> <p>20 last paragraph Dr. L'Heureux states that the</p> <p>21 infection began three to four weeks before</p> <p>22 Mr. Buchanan's motor vehicle accident. Do you have</p> <p>23 any reason to disagree with Dr. L'Heureux's opinion?</p> <p>24 A. Yes.</p> <p>25 Q. Based on what?</p>	<p style="text-align: right;">Page 92</p> <p>1 not cure the infection. Does that change your</p> <p>2 opinion as to whether or not the cervical -- the</p> <p>3 abscess began three to four weeks before the motor</p> <p>4 vehicle accident?</p> <p>5 A. No. Again, that's the same reasoning. A</p> <p>6 staphylococcus aureus moves very quickly. Those</p> <p>7 infections manifest themselves very quickly, and the</p> <p>8 timeline for this presentation versus the known</p> <p>9 bacteria doesn't work.</p> <p>10 Q. Okay. So we circled back to your report.</p> <p>11 Do you still have that in front of you?</p> <p>12 A. Exhibit 3?</p> <p>13 Q. I believe so. That sounds right.</p> <p>14 Sorry. Before we move on, I want to go</p> <p>15 back just a little bit. Do you intend to offer any</p> <p>16 opinions that any Turn Key employee caused</p> <p>17 Mr. Buchanan to have a cervical epidural abscess?</p> <p>18 A. Well, you couldn't -- to be clear, I</p> <p>19 would not offer any opinions that anyone caused it.</p> <p>20 It just is something that occurred.</p> <p>21 Q. Okay.</p> <p>22 All right. To your report. Let's go to</p> <p>23 the Statement of Opinions, second to last page. All</p> <p>24 right. The first one states that: "The healthcare</p> <p>25 (and lack thereof) provided to Mr. Buchanan from</p>
<p style="text-align: right;">Page 91</p> <p>1 A. Well, primarily based on the bacteria</p> <p>2 that grew as part of this infection. It's a</p> <p>3 methicillin-sensitive staphylococcus aureus, and that</p> <p>4 particular bacteria tends to grow very quickly, and</p> <p>5 particularly in the soft tissue it manifests itself</p> <p>6 as an infection in a matter of hours to days, and it</p> <p>7 does not usually take an indolent course, which would</p> <p>8 be manifest over weeks.</p> <p>9 Q. But, again, you have not been afforded</p> <p>10 the opportunity to review the records from</p> <p>11 Mr. Buchanan's stay at St. John's from September 16th</p> <p>12 to September 30th, 2016; right?</p> <p>13 A. Correct.</p> <p>14 Q. And you haven't seen the imaging records</p> <p>15 that they did while they were -- while Mr. Buchanan</p> <p>16 was there; right?</p> <p>17 A. That's correct.</p> <p>18 Q. That leads us into the next one, page 65,</p> <p>19 the top paragraph, but I'd like to call your</p> <p>20 attention to the last two sentences. This is in</p> <p>21 reference to Mr. Buchanan's stay at St. John's on</p> <p>22 September 16th to September 30th, 2016.</p> <p>23 Dr. L'Heureux states that the</p> <p>24 administration of IV antibiotics slowed the</p> <p>25 progressive -- progression of the infection but did</p>	<p style="text-align: right;">Page 93</p> <p>1 November 3rd, 2016 to November 14th, 2016 by Turn Key</p> <p>2 Health Clinics, LLC was substantially beneath the</p> <p>3 standard of care."</p> <p>4 Do you still agree with that statement?</p> <p>5 A. Yes.</p> <p>6 Q. All right. Can we agree that a breach in</p> <p>7 the standard of care is not the same as deliberate</p> <p>8 indifference?</p> <p>9 MR. BLAKEMORE: Objection. Calls for a</p> <p>10 legal conclusion. He wouldn't be able to testify to</p> <p>11 that anyway.</p> <p>12 Q. (BY MR. YOUNG) Do you understand the</p> <p>13 difference?</p> <p>14 A. Well, yes, I do understand that there is</p> <p>15 a difference, but they are not mutually exclusive.</p> <p>16 Q. Okay. Can we agree that there's a</p> <p>17 difference between providing care below the standard</p> <p>18 of care and outright ignoring a patient?</p> <p>19 A. Well, those can be the same thing. Once</p> <p>20 again they're not mutually exclusive.</p> <p>21 Q. But there is a difference between</p> <p>22 providing some care and providing absolutely no care.</p> <p>23 Can we agree on that?</p> <p>24 MR. BLAKEMORE: Object to form.</p> <p>25 A. Well, and I guess you'd have to include,</p>

<p style="text-align: right;">Page 94</p> <p>1 you know, sort of this concept that you may provide</p> <p>2 token care that has no reasonable chance of taking</p> <p>3 care of the patient, which really amounts to no care</p> <p>4 at all.</p> <p>5 Q. Would you agree with me that making a bad</p> <p>6 judgment call in medicine is different than knowing</p> <p>7 about a medical problem and doing nothing at all?</p> <p>8 MR. BLAKEMORE: Object to form.</p> <p>9 A. Well, those can be two different things,</p> <p>10 but again they're not mutually exclusive. It's</p> <p>11 possible to have those coexist.</p> <p>12 Q. I understand that doing nothing and</p> <p>13 breaching the standard of care can be the same thing.</p> <p>14 I'm asking you if there is also a difference.</p> <p>15 A. Well, it depends on the circumstances. I</p> <p>16 mean, you can't state that as a universal rule.</p> <p>17 Q. Right. Almost all care and all patients</p> <p>18 depend on the circumstances. Is that fair?</p> <p>19 A. Yes.</p> <p>20 Q. Because each one is different. All the</p> <p>21 circumstances surrounding the care are always</p> <p>22 different. Is that fair?</p> <p>23 A. Yes.</p> <p>24 Q. All right.</p> <p>25 Would you agree with me that providing</p>	<p style="text-align: right;">Page 96</p> <p>1 And then the last sentence says: "Had</p> <p>2 any medical provider seen him during this time</p> <p>3 period, it is likely that they would have easily</p> <p>4 assessed his pending neurological emergency and had</p> <p>5 him sent out for definitive care."</p> <p>6 Do you stand by that opinion -- those</p> <p>7 opinions?</p> <p>8 A. I do.</p> <p>9 Q. All right.</p> <p>10 We've already gone over that during his</p> <p>11 stay in the ICU at St. John's Mr. Buchanan's cervical</p> <p>12 epidural abscess was not diagnosed at that time; is</p> <p>13 that right?</p> <p>14 A. Well, I would disagree with the formation</p> <p>15 of your question. That question presumes that he had</p> <p>16 that condition and that it was not diagnosed, and I</p> <p>17 don't think that was the case.</p> <p>18 Q. Well, I mean, defendants' expert, who is</p> <p>19 an orthopedic surgeon and is board certified in</p> <p>20 orthopedic surgery, opined that he did at that time,</p> <p>21 and so that's the basis for my question. Do you have</p> <p>22 any reason to disagree with Dr. L'Heureux and that</p> <p>23 they failed to diagnose it at St. John's before he</p> <p>24 was discharged on September 30th, 2016?</p> <p>25 MR. BLAKEMORE: Object to form.</p>
<p style="text-align: right;">Page 95</p> <p>1 medications and scheduling appointments is a</p> <p>2 different thing from doing absolutely nothing?</p> <p>3 MR. BLAKEMORE: Object to form.</p> <p>4 A. Well, again it depends on the</p> <p>5 circumstances. It's possible that providing</p> <p>6 medications is actually deleterious to the patient</p> <p>7 where doing nothing would have been in their best</p> <p>8 interest.</p> <p>9 Q. And that's fair. And I suppose if</p> <p>10 someone was potentially providing someone harmful</p> <p>11 medication that would be different than doing it</p> <p>12 based on nothing but a lack of a mistake in judgment.</p> <p>13 Is that fair?</p> <p>14 A. Yes, but there's other scenarios that you</p> <p>15 could draw upon. There could be mistakes in the</p> <p>16 healthcare system where somebody gets a medication</p> <p>17 and there's a known allergy to that but the system</p> <p>18 does not flag that, so just as an example.</p> <p>19 Q. Okay.</p> <p>20 All right. No. 2. I want to kind of</p> <p>21 break this down a little bit. The first sentence</p> <p>22 says: "Mr. Buchanan's condition of an epidural</p> <p>23 abscess should have been identified and could have</p> <p>24 easily been addressed well before he lost permanent</p> <p>25 neurologic function."</p>	<p style="text-align: right;">Page 97</p> <p>1 A. Yes. We have talked about that already.</p> <p>2 Q. Now, we've gone over Mr. Buchanan went to</p> <p>3 St. John's ER on October 14th, 2016; he went to</p> <p>4 Dr. Greenhaw, a chiropractor, four times; and he went</p> <p>5 to Dr. Trinidad, the pain management specialist. His</p> <p>6 complaints were decrease in range of motion and pain.</p> <p>7 At none of those three providers -- the ER</p> <p>8 physicians, Dr. Greenhaw, and Dr. Trinidad -- made</p> <p>9 the diagnosis of a cervical epidural abscess; right?</p> <p>10 A. Correct.</p> <p>11 Q. And you already agreed with me earlier</p> <p>12 that Mr. Buchanan's complaints while he was in</p> <p>13 Muskogee County Jail, loss of range of motion and</p> <p>14 pain, were substantially similar to those complaints.</p> <p>15 Is that fair?</p> <p>16 MR. BLAKEMORE: Object to form.</p> <p>17 A. No, that's not entirely fair. I would</p> <p>18 agree that there was some overlap with the ones that</p> <p>19 he listed, but he had very clearly significant</p> <p>20 neurological symptomatology that was present and</p> <p>21 progressed when he was in jail that did not exist</p> <p>22 when he was out in the community.</p> <p>23 Q. What did he have? What symptoms were</p> <p>24 different?</p> <p>25 A. The numbness, tingling, loss of function,</p>

<p style="text-align: right;">Page 98</p> <p>1 and ultimately the loss of his ability to control his 2 bladder. 3 Q. Okay. The numbness and the tingling. 4 And what else other than the bladder? Numbness and 5 tingling and what else? 6 A. Numbness, tingling, the loss of function, 7 and ultimately the inability to control his bladder. 8 Q. Okay. So the numbness and the tingling 9 and the loss of ability to control his bladder, are 10 those symptoms recorded anywhere prior to 11 November 14th, 2016? 12 A. Well, yes. I mean, he reported those. 13 He indicated in his deposition that he reported those 14 to the staff. 15 Q. And we already talked about how his 16 memory of what he remembers from his incarceration is 17 very possibly not entirely accurate. Is that fair? 18 A. Sure, but there's, you know, corollary -- 19 or there's information that correlates that and 20 triangulates that report. There's the videotape of 21 his phone call with his brother, I believe, and 22 there's reports from the prisoners about how they had 23 to assist him and the progression of his neurologic 24 symptomatology is really sort of anatomically 25 appropriate with what you expect with this condition.</p>	<p style="text-align: right;">Page 100</p> <p>1 believe Mr. Buchanan and his fellow inmates. Is that 2 right? 3 MR. BLAKEMORE: Objection. 4 A. That is not at all what I said. 5 Q. Then please explain because that's what I 6 heard, is "If there is no records then I believe 7 Mr. Buchanan and the other inmates." That's the way 8 I heard what you said. 9 A. Well, that's an incorrect summary of what 10 I said. What I -- what I made mention of is the fact 11 that there are no appropriate healthcare records that 12 provide us with objective information in the form of 13 a proper medical assessment. Those would have been 14 nice to have in the chart. I'm sure you guys wish 15 they were there, but they're not, and so you have to 16 go with the evidence that is in existence, part of 17 which is his description of the progression of his 18 neurological issues, but you also correlate that with 19 the known final diagnosis and how it normally 20 presents in the normal progression. You correlate 21 that with what you see in the video phone call and 22 his inability to, you know, hold the phone, and you 23 correlate that with the other observational things 24 and the fact that the nurses are, you know, paying 25 attention to his chief complaints. That's the best</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. So the numbness, the tingling, the loss 2 of function, those three symptoms you are -- 3 Mr. Buchanan's self-reporting of those symptoms. 4 It's not charted anywhere in the medical records 5 until November 14th, 2016; so those symptoms, as far 6 as I understand it, come from Mr. Buchanan himself. 7 Is that right? 8 MR. BLAKEMORE: Object to form. 9 Q. (BY MR. YOUNG) Is that the basis of your 10 opinion? 11 A. Right, as I said, with triangulation from 12 other sources. You know, one of the challenges in 13 this case is the fact that the Turn Key Healthcare 14 staff don't chart appropriately. So really what you 15 would expect is that, when he has those complaints 16 and when he's on a sick call list to be seen, there 17 would be a proper medical note that does a proper 18 assessment that would give you objective findings as 19 to whether his complaints are legitimate or not. In 20 this case, since there is none of that, you really 21 have to rely on the evidence that does exist, and 22 overall I find that his recollection of his 23 neurological progression triangulated with the other 24 elements in this case is probable. 25 Q. Okay. So in the absence of evidence you</p>	<p style="text-align: right;">Page 101</p> <p>1 evidence that you have in this case. 2 Q. And it helps to look upon that evidence 3 retrospectively now knowing the outcome; right? In 4 real time the healthcare providers didn't have the 5 benefit of retrospect. Is that fair? 6 A. Sure. That's never the case. But they 7 certainly had ample evidence of his progressive 8 neurological decline to figure out that he needed a 9 higher level of assessment to be done. 10 Q. Based on his complaints of a decreased 11 range of motion and pain. 12 A. No, that's not correct. Based on his -- 13 those are elements of his complaint but also the 14 complaints of the numbness, tingling, loss of 15 function that progressed anatomically from arm to arm 16 to leg. 17 Q. According to Mr. Buchanan. 18 A. Sure. I mean, at a very reductionistic 19 standpoint, you have to start with the complaint of 20 the patient. That's not unreasonable. 21 Q. In paragraph 2 you make mention of lost 22 permanent neurological function. As we sit here 23 today, what is your understanding of Mr. Buchanan's 24 neurological function? 25 A. As I am here today, I have not examined</p>

<p style="text-align: right;">Page 102</p> <p>1 him; so I could not give you a finely tuned 2 assessment of his neurologic function, but I am aware 3 that he does have some return of function, and he -- 4 but he is still limited with respect to his ability 5 to work and he's considered to be a hundred percent 6 disabled. 7 Q. And are you aware that he can walk? 8 A. Yes. 9 Q. Are you aware that he can ride a bicycle? 10 A. Yes. I don't know -- I saw mention of 11 him cycling. I don't know what that means, whether 12 that's a stationary bike or one that's out on the 13 street. But he has had some return of neurologic 14 function but not back to baseline. 15 Q. He reported -- have you reviewed his home 16 healthcare records? 17 A. I have not. 18 Q. Okay. Well, if I represent to you that 19 he reported working out, lifting with weights, in, 20 I believe, the summer of 2018, would that surprise 21 you? 22 A. No. I hope he's able to do that. I 23 don't know that that's necessarily evidence of robust 24 function. Many patients like this are able to lift 25 modest weights, and we encourage them to do that.</p>	<p style="text-align: right;">Page 104</p> <p>1 vital signs, and I believe you described her 2 assessment as minimalistic. That's not the same 3 thing as never being assessed. Is that fair? 4 A. Well, the assessment, as I said, is 5 minimalistic, and that is part of the intake. What I 6 am referencing in that paragraph, though, is really 7 after his intake when he began having symptoms. 8 Q. Okay. So then never assessed the whole 9 time. That's not -- that's not what you mean. Is 10 that fair? 11 A. Well, I still think that's an accurate 12 statement. I don't think the intake would qualify as 13 an assessment. 14 Q. Well, you just described it as 15 minimalistic and including vital signs; so is it 16 absolutely no assessment or is it minimalistic 17 assessment? 18 A. Well, it's minimalistic and inadequate. 19 Q. Okay. But it's not no assessment; is 20 that right? 21 MR. BLAKEMORE: Object to form. 22 A. Well, it's no assessment that would be 23 adequate for the delivery of healthcare for this 24 patient. 25 Q. And the Naproxen that he received twice a</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. Okay. So then is it fair to say when it 2 comes to any loss of permanent function you don't 3 know one way or the other to what extent Mr. Buchanan 4 may have lost permanent function? 5 A. Not at this point in time, no. 6 Q. Okay. 7 All right. You say in the middle of the 8 paragraph: "No semblance of reasonable healthcare 9 was provided to him during his entire stay in jail. 10 He was never assessed by a nurse, no vital signs were 11 taken until the very end, and he was never seen by a 12 medical provider despite clear progression." 13 We went through earlier Mr. Buchanan's 14 intake where Nurse Kotas went through the form, and 15 yet you say that he was never assessed his entire 16 stay in jail. How do you -- what are you basing that 17 on? 18 A. Well, I certainly wouldn't consider that 19 intake to be an assessment. It's notably deficient 20 in information. I would grant you that there was -- 21 there were some vital signs taken at that time, but 22 the rest of the assessment was pretty minimalistic 23 and not really focused in any way. 24 Q. And is that because -- strike that. 25 So he took vital signs. Nurse Kotas took</p>	<p style="text-align: right;">Page 105</p> <p>1 day almost every day, is that also no reasonable 2 healthcare? 3 A. Well, the Naproxen is a medication 4 treatment that was started for him based on no 5 assessment and no follow-up with respect to efficacy. 6 Q. I thought you just described it as a 7 minimalistic assessment. Now it's back to no 8 assessment? 9 MR. BLAKEMORE: Object to form. 10 A. Careful now. The Naproxen was started 11 after the intake. 12 Q. I know. 13 A. So there was no assessment by the 14 ordering clinician to initiate that therapy. 15 Q. And it's your opinion that Dr. Cooper 16 needed to do a personal examination before ordering 17 the Naproxen based on increased discomfort with 18 movement? 19 A. It is my opinion that based on the 20 presenting facts of this individual case that he 21 should have been assessed by a prescriber, and a 22 treatment plan should have been developed based on 23 that assessment, and then he should have been seen 24 again when he had progression and new onset of 25 symptoms.</p>

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1 **Q. When you say the facts that he presented**
 2 **with, do you mean the symptoms that he described, the**
 3 **increased discomfort with movement, or are you**
 4 **referring to history of the motor vehicle accident or**
 5 **both?**
 6 A. Well, really both. The history of his
 7 motor vehicle accident and his past medical history
 8 of the injuries sustained in that and the fairly
 9 close proximity in time should have led to a proper
 10 assessment in this patient.
 11 **Q. Okay. And what do you think would have**
 12 **been different had that happened?**
 13 A. Well, I think that a more sophisticated
 14 treatment plan likely would have been put in place,
 15 and you would have had a baseline of his function
 16 against which to judge the presentation of his new
 17 onset of symptoms later on in his incarceration.
 18 **Q. All right. So the fact that on**
 19 **October 14th Mr. Buchanan presented to the St. John's**
 20 **ER with substantially similar complaints to at least**
 21 **those of his intake, increased discomfort with**
 22 **movement and pain, and the fact that he had similar**
 23 **complaints to the chiropractor, Dr. Greenhaw, four**
 24 **times nine and ten pain, decreased range of motion,**
 25 **and then he also saw Dr. Trinidad, same complaints,**

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1 every single time they sent Mr. Buchanan on his way
 2 after they talked to him. But you think that on
 3 November 3rd, 2016, at his intake assessment at
 4 Muskogee County Jail they should have done more than
 5 those other physicians; is that right?
 6 MR. BLAKEMORE: Object to form.
 7 A. Well, yes. I think what I would really
 8 say is they should have done what those other
 9 physicians did. In each of those encounters you
 10 cite, he was seen and evaluated by a physician and a
 11 treatment plan was put in place. When he was at the
 12 Muskogee County Jail, at his intake he was seen by an
 13 LPN, who is not legally allowed to do an assessment,
 14 and that was the extent of the healthcare encounter
 15 that he had.
 16 **Q. When you say she's not legally allowed to**
 17 **do an assessment, are you saying by having an LPN do**
 18 **intakes Turn Key is violating Oklahoma law?**
 19 A. Yes.
 20 **Q. Okay. Do you know -- can you cite to me**
 21 **the law?**
 22 A. I'd have to look it up. LPNs are --
 23 across the country they are not allowed to do
 24 assessments.
 25 **Q. Okay. Is an assessment different than a**

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1 screening?
 2 A. Yes.
 3 **Q. How?**
 4 A. Well, an assessment involves more of an
 5 exam and making judgment. A screening is merely
 6 recording data.
 7 **Q. Okay. Which one of those things did**
 8 **Nurse Kotas do on November 3rd, 2016?**
 9 A. Well, she did a minimalistic assessment.
 10 **Q. Not a screening?**
 11 A. Right.
 12 **Q. Isn't a screening just a reduced version**
 13 **of an assessment?**
 14 A. No.
 15 **Q. All right. Do you mind going back to**
 16 **defense Exhibit 8. It's the Turn Key records. Do**
 17 **you mind turning to page 9, please. All right. I**
 18 **know how you feel about the completeness of the form,**
 19 **but my question to you is where does this form cross**
 20 **the line from screening to assessment?**
 21 A. Well, the screening would have been just
 22 the recordation of demographic information and the
 23 vital signs, and when she's getting down into more of
 24 a judgment with respect to his appearance and
 25 behavior and those elements, then she's crossing over

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1 into an assessment.
 2 **Q. So determining whether someone is**
 3 **sweating, having tremors, anxious or disheveled,**
 4 **that's an assessment?**
 5 A. Sure.
 6 **Q. Same for behavior, determining whether**
 7 **someone is nervous, disorderly, insensible, or**
 8 **inappropriate?**
 9 A. Sure, in the sense that she's going to
 10 use that information to determine a plan for this
 11 individual. In this scenario with this intake screen
 12 it's kind of the worst of all possible situations
 13 because you have an LPN doing a minimalistic
 14 assessment information and a proper assessment by a
 15 licensed, qualified individual is not done.
 16 **Q. So is it your opinion that only RNs**
 17 **should be employed by correctional healthcare**
 18 **providers?**
 19 A. No.
 20 **Q. They're the ones qualified to do the job?**
 21 A. No. My opinion is the healthcare
 22 providers need to assign their staff to work within
 23 their scope of practice.
 24 **Q. And an LPN is not qualified to determine**
 25 **whether or not someone's state of consciousness is**

<p style="text-align: right;">Page 110</p> <p>1 alert, lethargic, or under the influence?</p> <p>2 A. Not in the sense that it's going to</p> <p>3 translate into a nursing care plan. The other</p> <p>4 problem with the system that we know from the</p> <p>5 depositions is there was no supervising RN for her to</p> <p>6 discuss the case with, which is really the</p> <p>7 requirement.</p> <p>8 Q. Based on what? Where are you getting</p> <p>9 that requirement?</p> <p>10 A. Well, that's standard Nursing Practice</p> <p>11 Act.</p> <p>12 Q. There has to be an RN physically watching</p> <p>13 over the LPN?</p> <p>14 A. They have to be available for them to</p> <p>15 discuss the case with and directly supervising their</p> <p>16 care. LPNs --</p> <p>17 Q. Do you know one way or another whether or</p> <p>18 not there was such an RN or a 24-hour on-call</p> <p>19 physician available for Nurse Kotas to call?</p> <p>20 A. According to the deposition, there was no</p> <p>21 RN that was available for that.</p> <p>22 Q. Well, I'll represent to you that</p> <p>23 according to Dr. Cooper's deposition he was on-call</p> <p>24 24 hours a day and could have been contacted. Would</p> <p>25 that satisfy your opinion for on-call availability?</p>	<p style="text-align: right;">Page 112</p> <p>1 spoke to and interacted with nurses during his</p> <p>2 incarceration; right?</p> <p>3 MR. BLAKEMORE: Who is "he"?</p> <p>4 MR. YOUNG: Mr. Buchanan.</p> <p>5 THE WITNESS: No, I agree that he did</p> <p>6 interact with the nursing staff.</p> <p>7 Q. (BY MR. YOUNG) Okay.</p> <p>8 And he got Naproxen either once or twice</p> <p>9 a day depending on who you believe; right?</p> <p>10 MR. BLAKEMORE: Objection.</p> <p>11 A. Correct.</p> <p>12 Q. And the records show it was twice; right?</p> <p>13 MR. BLAKEMORE: Asked and answered</p> <p>14 multiple times.</p> <p>15 Q. (BY MR. YOUNG) All right. The statement</p> <p>16 of opinion No. 3: "In reviewing this case, it is</p> <p>17 clear that the circumstances that allowed this</p> <p>18 patient to go from ambulatory to quadriplegic over</p> <p>19 11 days without any meaningful intervention are due</p> <p>20 to systemic failures in the Turn Key health program."</p> <p>21 Do you still stand by that opinion?</p> <p>22 A. Yes.</p> <p>23 Q. Have you reviewed the Turn Key policies</p> <p>24 and procedures?</p> <p>25 A. Some of them.</p>
<p style="text-align: right;">Page 111</p> <p>1 MR. BLAKEMORE: Object to form.</p> <p>2 A. No.</p> <p>3 Q. Why not?</p> <p>4 A. Because he doesn't come into the</p> <p>5 institution and is not supervising the nurses'</p> <p>6 practice.</p> <p>7 Q. You just said it has to be available by</p> <p>8 phone. Did I mistake that?</p> <p>9 MR. BLAKEMORE: Object to form.</p> <p>10 A. No, that's correct, but they still have</p> <p>11 to supervise the nurses' practice, and physicians</p> <p>12 don't supervise LPNs. That's not really the way it's</p> <p>13 structured in healthcare.</p> <p>14 Q. But you don't know one way or another</p> <p>15 whether or not that was the case here; right?</p> <p>16 MR. BLAKEMORE: Object to form.</p> <p>17 A. I don't understand your question.</p> <p>18 Q. You don't know one way or the other</p> <p>19 whether or not Dr. Cooper would have been supervising</p> <p>20 Nurse Kotas; right? You're just talking about</p> <p>21 general practice in correctional healthcare?</p> <p>22 A. No. That's the general practice in</p> <p>23 healthcare overall. Physicians don't supervise</p> <p>24 nurses clinically.</p> <p>25 Q. Okay. You don't disagree with me that he</p>	<p style="text-align: right;">Page 113</p> <p>1 Q. Okay. We'll get to that in a second.</p> <p>2 My question is, is this opinion based on</p> <p>3 any specific policy or procedure that you read?</p> <p>4 A. Not based on any specific one. They</p> <p>5 contributed to the formulation of this opinion,</p> <p>6 though.</p> <p>7 Q. Okay. So this is more a general</p> <p>8 collective of them as opposed to a single policy that</p> <p>9 you think would have been the -- would have been</p> <p>10 responsible for any harm that came to Mr. Buchanan.</p> <p>11 Is that fair?</p> <p>12 MR. BLAKEMORE: Object to form.</p> <p>13 A. Well, those certainly informed the</p> <p>14 opinion, but the other elements that informed this</p> <p>15 opinion were the medical records and lack of medical</p> <p>16 records that are in evidence in this case.</p> <p>17 Q. Sure. I get that. I was curious if</p> <p>18 there was one policy that stuck out to you and that's</p> <p>19 what you were talking about in this No. 3. So just</p> <p>20 to be clear, is your answer, no, that there was not a</p> <p>21 specific policy that you were referring to in this</p> <p>22 third opinion?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. Thank you.</p> <p>25 (Exhibit 12 was marked.)</p>

<p>Page 114</p> <p>1 Doctor, I'll hand you defense Exhibit 12.</p> <p>2 These are the Turn Key policies and procedures</p> <p>3 produced in this case. I believe you said a minute</p> <p>4 ago you reviewed some but not all of these. Is that</p> <p>5 accurate?</p> <p>6 A. Yes, I've looked at a number of these. I</p> <p>7 didn't -- at the time that I reviewed them, I did not</p> <p>8 know if it was a complete set or not as I was seeing</p> <p>9 policies and procedures in front of me.</p> <p>10 Q. Okay. Well, I'll represent to you that</p> <p>11 when we were doing written discovery Turn Key</p> <p>12 produced the table of contents to plaintiffs, and we</p> <p>13 came to an understanding as to at least that time</p> <p>14 what we agreed are the relevant policies and</p> <p>15 procedures and protocols, and this is a list of them.</p> <p>16 A. You probably have a better understanding</p> <p>17 of what completeness is compared to me.</p> <p>18 Q. If you had a problem with that, you</p> <p>19 probably would have stated it; so I think I probably</p> <p>20 got pretty close there.</p> <p>21 All right. We've already discussed "A."</p> <p>22 LPNs working unsupervised. Is it fair to say that</p> <p>23 you don't agree with me that having a physician</p> <p>24 on-call 24-7 counts as supervision?</p> <p>25 A. Correct.</p>	<p>Page 116</p> <p>1 really the rest of the records that should have been</p> <p>2 requested and reviewed.</p> <p>3 Q. Well, if he only disclosed the Estar</p> <p>4 visit -- strike that. Okay.</p> <p>5 So am I correct that you feel like the</p> <p>6 records should have been requested, but you can't say</p> <p>7 one way or another whether or not it would have</p> <p>8 changed the outcome?</p> <p>9 A. Well, they should have been requested and</p> <p>10 reviewed so that -- and I'm sure that the treatment</p> <p>11 plan would have been different had they done that,</p> <p>12 but that's a judgment call based on the reviewer and</p> <p>13 what they were doing.</p> <p>14 Q. Okay. So you can't say one way or</p> <p>15 another whether the outcome would have been</p> <p>16 different; is that correct?</p> <p>17 A. Correct.</p> <p>18 Q. All right. Part C under No. 3: "There</p> <p>19 was no reasonable access to a physician or midlevel</p> <p>20 provider."</p> <p>21 There was a midlevel provider at the</p> <p>22 facility once a week. I believe there's records to</p> <p>23 support that. Is that your understanding?</p> <p>24 A. Yes.</p> <p>25 Q. Okay.</p>
<p>Page 115</p> <p>1 Q. Okay.</p> <p>2 Part B, one of your criticisms is the</p> <p>3 outside medical records were not reviewed. We know</p> <p>4 that on the 14th Katie McCullar sent a request to</p> <p>5 Estar, and those records eventually came back. Now,</p> <p>6 I think we all agree that those records were not</p> <p>7 reviewed before Mr. Buchanan left Muskogee County</p> <p>8 Jail.</p> <p>9 But my question to you is what is</p> <p>10 contained in those Estar records, in your opinion,</p> <p>11 that would have made a difference in his care and</p> <p>12 treatment at Muskogee County Jail?</p> <p>13 MR. BLAKEMORE: Object to form and</p> <p>14 misstates the evidence.</p> <p>15 A. Well, I'd have to look at those records</p> <p>16 specifically to answer your question with</p> <p>17 specificity, but really the point of item B here is</p> <p>18 that at the intake assessment he communicated to the</p> <p>19 staff that he'd had a serious accident and had</p> <p>20 serious injuries, which should have prompted a</p> <p>21 medical records request to obtain a better</p> <p>22 understanding of the extent of his injuries and the</p> <p>23 treatment plan that he was on in the community.</p> <p>24 Q. Okay.</p> <p>25 A. So it's not so much the Estar records but</p>	<p>Page 117</p> <p>1 A. Which is inadequate for a facility of</p> <p>2 this size.</p> <p>3 Q. Okay. What would -- what would be</p> <p>4 adequate, in your opinion?</p> <p>5 A. Well, it really depends a lot on sort of</p> <p>6 the overall acuity of the patients, but from a</p> <p>7 minimalistic standpoint you would probably expect to</p> <p>8 see at least a half-time FTE prescriber for a</p> <p>9 facility of this size.</p> <p>10 Q. Can you help me out there, a half time</p> <p>11 FDE? I don't understand what that means.</p> <p>12 A. Well, a full FTE is usually 40 hours of</p> <p>13 clinical time per week; so a half time would be</p> <p>14 probably 20 hours of clinical time.</p> <p>15 Q. And what is your understanding of how</p> <p>16 many inmates were at Muskogee County Jail in November</p> <p>17 of 2016?</p> <p>18 A. My understanding is it's approximately</p> <p>19 four hundred.</p> <p>20 Q. Okay. Do you remember where you got that</p> <p>21 number?</p> <p>22 A. I believe it was in one of the</p> <p>23 depositions.</p> <p>24 Q. Okay. And the 20 hours FTE that you said</p> <p>25 would be appropriate -- am I saying that right?</p>

<p style="text-align: right;">Page 118</p> <p>1 A. Yes.</p> <p>2 Q. -- are you getting that from --</p> <p>3 A. I'm sorry. No it would be a half-time</p> <p>4 FTE.</p> <p>5 Q. Okay. I'm sorry. I've misunderstood.</p> <p>6 MR. ARTUS: What is an FTE? I'm sorry.</p> <p>7 MR. YOUNG: Yeah.</p> <p>8 THE WITNESS: Full-time equivalent.</p> <p>9 Q. (BY MR. YOUNG) Half-time FTE, is that</p> <p>10 20 hours? Did I understand that right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And you were saying that half-time</p> <p>13 FTE, which means 20 hours of clinic time by a</p> <p>14 physician or midlevel provider; is that right?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. That's what you say would have</p> <p>17 been appropriate for that number of inmates. Did I</p> <p>18 get that right?</p> <p>19 A. Well, what I'm saying is that's a rough</p> <p>20 estimate. You would have to determine -- you would</p> <p>21 have to look at the patient demand, the backlogs,</p> <p>22 that sort of a thing, to adjust that number up and</p> <p>23 down --</p> <p>24 Q. Sure.</p> <p>25 A. -- but that would be a good starting</p>	<p style="text-align: right;">Page 120</p> <p>1 A. But the number that I gave you is fairly</p> <p>2 close to what the recommendations have been over the</p> <p>3 years.</p> <p>4 Q. Okay.</p> <p>5 A. But it's really not about that number.</p> <p>6 You know, this criticism here is really about the</p> <p>7 fact that this particular patient had symptoms that</p> <p>8 were progressive and was never seen by a clinician.</p> <p>9 Q. And just to make sure I've got an</p> <p>10 understanding here, are you aware of any Oklahoma law</p> <p>11 that sets this ratio that we've been discussing?</p> <p>12 A. No.</p> <p>13 Q. Okay.</p> <p>14 On part D you say that the on-call</p> <p>15 process was deficient. Now, if there was a physician</p> <p>16 on-call 24 hours a day, in what way is the on-call</p> <p>17 process deficient?</p> <p>18 A. Well, in the sense that there really</p> <p>19 wasn't any sort of assessment that would convey to</p> <p>20 the on-call -- that was done or conveyed to the</p> <p>21 on-call physician for determination of a treatment</p> <p>22 plan, especially when the symptoms were progressive.</p> <p>23 Q. So it's not the on-call process itself.</p> <p>24 It's the symptoms that were relayed to the physician.</p> <p>25 Is that accurate?</p>
<p style="text-align: right;">Page 119</p> <p>1 point for a facility of this size.</p> <p>2 Q. I guess my question is where were you</p> <p>3 getting that starting point? Is that a law, is that</p> <p>4 a standard, or is that your opinion?</p> <p>5 A. That's a fairly well worked out ratio</p> <p>6 within correctional healthcare.</p> <p>7 Q. Okay. Is that published somewhere? I'm</p> <p>8 just curious where you got this ratio.</p> <p>9 A. Part of it is based on a lot of</p> <p>10 experience consulting, and that's kind of where the</p> <p>11 number usually comes out, but that's also a number</p> <p>12 that NCCHC has referenced in the past.</p> <p>13 Q. So there is an NCCHC standard that</p> <p>14 articulates this ratio that you've just spoken about;</p> <p>15 is that right?</p> <p>16 A. No, that number would not be in their</p> <p>17 standard. They've moved to another one that I'd have</p> <p>18 to look up to see if it's in their current standards</p> <p>19 or not.</p> <p>20 Q. Okay. So when it comes to midlevel</p> <p>21 physician clinic hours, the ratio per inmate, you're</p> <p>22 not, as we sit here, aware of the current NCCHC</p> <p>23 standard. Is that fair?</p> <p>24 A. Yes.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 121</p> <p>1 MR. BLAKEMORE: Object to form.</p> <p>2 A. Well, it's all part of a process.</p> <p>3 Q. As far as you know, does the on-call</p> <p>4 process, as you've understood it from the records --</p> <p>5 is it in compliance with Oklahoma law?</p> <p>6 A. I don't know that there's any written</p> <p>7 text that would define that.</p> <p>8 Q. Okay. Is that both statute and NCCHC</p> <p>9 standards? You're not aware of any text?</p> <p>10 A. Well, NCCHC standards would address that</p> <p>11 in a certain respect, but, you know, really what the</p> <p>12 deficiency would be is that given the progression of</p> <p>13 symptoms there wasn't a clinical appointment that was</p> <p>14 seen by -- or was accomplished by a clinician.</p> <p>15 Q. Okay.</p> <p>16 A. They were on-call, but they never came in</p> <p>17 to see the patient.</p> <p>18 Q. All right. So as far as this specific</p> <p>19 criticism, there's not an NCCHC standard or Oklahoma</p> <p>20 statute that says it's deficient; is that right?</p> <p>21 A. Well, NCCHC would find that to be</p> <p>22 deficient for when patients have progressive problems</p> <p>23 they should be seen by a clinician.</p> <p>24 Q. Okay.</p> <p>25 A. You can't just take a telephone call and</p>

<p style="text-align: right;">Page 122</p> <p>1 never see the patient.</p> <p>2 Q. I'll be more specific.</p> <p>3 A. For example, you can't -- well to be, you</p> <p>4 know, succinct, you can't just phone in the care.</p> <p>5 Q. I understand. As far as 24/7 access to a</p> <p>6 physician, that in a vacuum of itself, is that a</p> <p>7 deficient on-call system?</p> <p>8 MR. BLAKEMORE: Object to form.</p> <p>9 A. Possibly, if they don't ever come in to</p> <p>10 see the patient. Being on call sort of assumes that</p> <p>11 you're available to come in and see a patient that's</p> <p>12 in trouble.</p> <p>13 Q. And are you aware one way or the other</p> <p>14 whether or not Dr. Cooper was available to come in to</p> <p>15 see James Buchanan if necessary?</p> <p>16 A. Well, I don't know whether he was</p> <p>17 technically available, but he did not. And according</p> <p>18 to the depositions, doing on-site clinic visits with</p> <p>19 patients was not part of his history.</p> <p>20 Q. But you haven't read his deposition,</p> <p>21 right, Dr. Cooper's deposition?</p> <p>22 A. That's correct. Just the nurses who</p> <p>23 worked at the facility.</p> <p>24 MR. BLAKEMORE: Can we take a five-minute</p> <p>25 break?</p>	<p style="text-align: right;">Page 124</p> <p>1 Dr. Cooper. Anything that shows that he was</p> <p>2 motivated by intent to cause harm to James Buchanan?</p> <p>3 A. I don't think there's anything in the</p> <p>4 record to show that he did much of anything.</p> <p>5 Q. So the answer is no, though?</p> <p>6 A. Yeah.</p> <p>7 Q. All right. Back to your statement of</p> <p>8 opinions, part F, you say that "The system utilizes</p> <p>9 nursing protocols to avoid having patients see</p> <p>10 providers."</p> <p>11 Do you stand by that?</p> <p>12 A. Yes.</p> <p>13 Q. All right.</p> <p>14 If you'll flip in defense Exhibit 12,</p> <p>15 please, to TK_RFP No. 1008. Do you know whether or</p> <p>16 not you reviewed this policy, which is titled</p> <p>17 "Nursing Assessment Protocols"?</p> <p>18 A. I remember reading over this briefly, but</p> <p>19 mostly what I reviewed were the actual protocols</p> <p>20 themselves.</p> <p>21 Q. In your experience, are these types of</p> <p>22 protocols or standing orders -- are those typical in</p> <p>23 the correctional healthcare field?</p> <p>24 A. Well, you do find facilities that use</p> <p>25 nursing assessment protocols, and most of the time</p>
<p style="text-align: right;">Page 123</p> <p>1 MR. YOUNG: Yeah.</p> <p>2 (Recess.)</p> <p>3 Q. (BY MR. YOUNG) All right. Dr. Wilcox,</p> <p>4 we're back on the record after a quick break. Do you</p> <p>5 feel like -- you know that Nurse Katie McCullar is</p> <p>6 one of the defendants in this case; right?</p> <p>7 A. Correct.</p> <p>8 Q. In your review of the records and your</p> <p>9 opinion, do you feel like she did anything to</p> <p>10 intentionally cause harm to James Buchanan?</p> <p>11 MR. BLAKEMORE: Did you say</p> <p>12 "intentionally"?</p> <p>13 MR. YOUNG: Correct.</p> <p>14 Q. (BY MR. YOUNG) Did she intend him harm?</p> <p>15 A. Well, I have criticism of her care, for</p> <p>16 sure.</p> <p>17 Q. I understand that. I meant have you seen</p> <p>18 anything to show that she was motivated by an intent</p> <p>19 to bring him harm?</p> <p>20 A. I don't think there's any evidence in the</p> <p>21 record that would inform an opinion like that.</p> <p>22 Q. Okay.</p> <p>23 MR. BLAKEMORE: We haven't alleged it.</p> <p>24 MR. YOUNG: Okay.</p> <p>25 Q. (BY MR. YOUNG) And same question for</p>	<p style="text-align: right;">Page 125</p> <p>1 they are not legal or appropriate, but there are a</p> <p>2 few places that have managed to use them in a way</p> <p>3 that is reasonable.</p> <p>4 Q. When you say "a few places," do you mean</p> <p>5 because state laws are different or because of the</p> <p>6 wording of the protocols?</p> <p>7 A. Well, it's really more the application</p> <p>8 and the content of the protocol and what it seeks to</p> <p>9 treat.</p> <p>10 Q. Okay. Now, am I going to be correct if I</p> <p>11 say that in the same way that you feel like the</p> <p>12 intake form called for an LPN to practice medicine,</p> <p>13 is that the same way you feel about the nursing</p> <p>14 protocols -- close?</p> <p>15 A. Well, to be clear, the intake issue is --</p> <p>16 I don't think I said it is a practice of medicine.</p> <p>17 That's more exceeding the scope of practice of an LPN</p> <p>18 and doing what would be an assessment that's in the</p> <p>19 realm of an RN.</p> <p>20 Q. Okay.</p> <p>21 A. Now, with nursing assessment protocols,</p> <p>22 the typical problem is really sort of a compounded</p> <p>23 issue because the LPNs are very clearly doing nursing</p> <p>24 assessments and actually making diagnoses, and</p> <p>25 oftentimes, as is the case in these ones, they are</p>

<p style="text-align: right;">Page 126</p> <p>1 practicing medicine by making a diagnosis and doing 2 prescriptive care. 3 Q. Okay. Can you please show me 4 specifically what you're talking about when you say 5 making diagnoses and prescriptions? 6 A. So the nursing protocols that are part of 7 your policies and procedures here are listed starting 8 with 1031. 9 Q. Okay. Give me a sec. 10 Okay. I'm there. What specifically are 11 you talking about when you say that it requires a 12 nurse to practice medicine? 13 A. So the mere choosing of which protocol to 14 use is the function of making a diagnosis. You 15 can't -- you have to have a diagnosis in mind in 16 order to know which one to choose, and so that -- 17 that is part of the problem. But where they get in 18 trouble is in this whole workup, you know, for 19 example, this back pain one that I'm looking at here, 20 this whole workup is an assessment that is outside 21 the scope of practice of an LPN. 22 And then you get down to the plan that, 23 for example, No. 2, one of the options that they can 24 do is ibuprofen 400 milligrams PO BID for no more 25 than seven days without a provider order. Ibuprofen</p>	<p style="text-align: right;">Page 128</p> <p>1 the development of the plan that is the realm of an 2 RN, not an LPN. 3 Q. Okay. So data collection. Vomiting, 4 that's data collection. That's not data collection. 5 Is that what you're telling me? 6 A. Right. And the assessment of a normal 7 gait, the assessment of abdominal pain, the 8 assessment of range of motion. All of that is 9 assessment data that is outside the scope of practice 10 of an LPN. 11 Q. Okay. And are you citing to the Nursing 12 Practice Act, to Oklahoma law? Where are you 13 referencing? 14 A. Oh, I am citing to every Nurse Practice 15 Act. I mean, that's a well-established delineation 16 in healthcare, that LPNs are not allowed to do 17 nursing assessments, particularly on new onset, 18 undiagnosed problems. 19 So I guess to say it in a different way, 20 the completion of this nursing assessment form would 21 have to be done by an RN and then the prescriptive 22 component would have to be completed by a physician. 23 Q. I get it. As a layperson it all kind of 24 looks the same to me; so I needed you to kind of 25 articulate that for me.</p>
<p style="text-align: right;">Page 127</p> <p>1 400 milligrams is a prescriptive dose of ibuprofen 2 that an LPN is not legally allowed to give to this 3 patient for even one dose, let alone the 14 that are 4 authorized by this protocol. We can go through 5 others if you want, but that's an example. 6 Q. Actually, I'd like to go back to the top, 7 because you said that essentially everything that's 8 in this subjective and objective data is practicing 9 medicine, and it's my understanding -- 10 A. No, I didn't say that. 11 Q. Okay. I don't want to misstate you. I 12 just want to get a little more definition and 13 clarity, please. What specifically are you talking 14 about? 15 A. So this whole section up here on -- 16 that's the assessment, the subjective and the 17 objective, that is a nursing assessment, which is 18 outside the scope of practice for an LPN. 19 Q. And that's true of the subjective and 20 objective data, those boxes. Is that -- am I 21 understanding -- 22 A. Yeah. There are elements of the 23 subjective part that would be data collection, for 24 example, allergies and initial complaint, things like 25 that. But it really is the objective component in</p>	<p style="text-align: right;">Page 129</p> <p>1 I have a question. In your report, 2 page 7 of 10 -- I don't remember what the exhibit is. 3 I think it's Exhibit 3. Sorry. Go to page 6, first 4 paragraph, please. In the middle of that paragraph 5 there is a line that says: "Turn Key's protocol 6 regarding MUSCULAR SKELETAL/SPRAINS should have been 7 applied but was not." 8 Is that your opinion? 9 A. Well, that -- that's really not in the 10 opinions section. To be honest, that certainly would 11 have been a relevant protocol for assessing the 12 patient, but to be privily honest with you, I would 13 have been delighted if the nurse would have applied 14 any protocol to assess the patient. 15 Q. But you just said that was illegally 16 practicing medicine because Nurse McCullar at that 17 time was an LPN. 18 A. Right. So, you know, you needed to have 19 a nurse come in and do that or the clinician needed 20 to come in and do it. You can't have this lib at the 21 LPN level. 22 Q. Okay. So I guess I'm just not clear on 23 the contradiction between -- you say that the 24 protocol should have been applied, but also it 25 shouldn't have been applied because she was an LPN.</p>

<p style="text-align: right;">Page 130</p> <p>1 You're saying that the only option was for an RN or 2 higher to come in. Is that fair? 3 MR. BLAKEMORE: Object to form. 4 A. Well, yeah, that would be legal. But 5 even if she went through kind of the basics of the 6 data collection and then had that discussion with the 7 clinician, it would have been better than really the 8 situation that occurred, which is none of that 9 happened. And when a patient complains of a new 10 onset of symptoms or has a complaint about a problem, 11 you at least have to do something, some sort of 12 objective analysis. 13 Q. And you don't feel that calling the 14 provider and relaying the symptoms counts as doing 15 something; is that right? 16 A. Well, you know, what she relayed, I mean, 17 there was really sort of minimal objective 18 information, and we'd have to reference which note 19 you're talking about. But in the multiple sick call 20 assessments done -- or not really done but noted 21 about this individual, there's no documentation that 22 anybody did a reasonable assessment of this patient. 23 But I guess that really gets to, you 24 know, the criticism of the systemic issues because 25 when you're not staffed appropriately for the right</p>	<p style="text-align: right;">Page 132</p> <p>1 about in more detail, you have an LPN doing 2 assessments in intake and not really doing a very 3 good job of it, which resulted in an ineffective care 4 plan leaving the booking area. The patient had 5 complaints of issues and progressive physical exam 6 findings throughout his stay in the jail. An 7 appropriate assessment was never done. He was never 8 seen by a provider due to -- even though he had 9 ominous symptoms and ominous progression, and just 10 the overall access to appropriately licensed 11 individuals making decisions at their appropriate 12 level of expertise didn't happen. 13 Q. All right. Is there anything in No. -- 14 sorry. Let's go back to I. "Officers did not 15 interface adequately with the healthcare staff to 16 advocate for Mr. Buchanan." 17 What data -- what are you basing that on? 18 Is there records that you're basing this on? 19 A. Well, I suspect that there are records 20 that better delineate this that would be available to 21 review that I have not reviewed. But, you know, the 22 officers are really the frontline staff who are 23 interfacing with the prisoners more than the health 24 care staff. You know, the nurses typically will come 25 by twice a day, deliver medication. But the officers</p>
<p style="text-align: right;">Page 131</p> <p>1 level of licensure to do the right kind of assessment 2 for patients who have problems. 3 Q. Have you reviewed the contract between 4 Turn Key and Muskogee County? 5 A. Not in any detail, no. 6 Q. Okay. 7 All right. H. This one is pretty vague; 8 so I'm just going to kind of ask you to tell me what 9 you mean, and I'll go ahead and say this is a -- I'm 10 getting close to the end; so if there's anything that 11 you've left on the table that I haven't asked, feel 12 free to lay it on me here. What do you mean by 13 "Access to healthcare was compromised"? 14 A. Well, the concept of access to healthcare 15 in a correctional facility is really fundamental to 16 the delivery of care. This is a broad category. 17 There's lots of elements that are kind of included in 18 this with respect to whether a prisoner can get 19 appropriate healthcare by an appropriately licensed 20 individual, done in a timely fashion, and with kind 21 of an appropriate outcome for the healthcare that 22 was, you know, ordered, and so there's just lots of 23 different elements of that. 24 But where you end up with problems in 25 this particular case is, you know, as we've talked</p>	<p style="text-align: right;">Page 133</p> <p>1 are in those units 24/7; so they have a much better 2 sense for how someone is doing. Typically, in many 3 systems, the officers are real advocates for patient 4 care for patients who are not doing well. And I 5 didn't really see any evidence of that in the records 6 here, which is surprising. 7 Q. And if you say that that's -- it's your 8 opinion that that's typical, that healthcare -- that 9 correctional officers are advocates and that that 10 didn't occur here, did it ever occur to you that 11 perhaps Mr. Buchanan's recitation of his symptoms 12 throughout his stay was embellished or mistaken at 13 all? 14 MR. BLAKEMORE: Object to form. 15 A. That's possible, but -- 16 Q. I mean, if they are typically -- if 17 correctional officers are typically advocates and 18 they weren't in this case, is it not a reasonable 19 conclusion that there was nothing to advocate for? 20 MR. BLAKEMORE: Object to form. 21 A. That's one possible conclusion. I don't 22 think that's the accurate conclusion in this case. 23 But... 24 Q. Well, you agreed with me earlier that as 25 an expert opinion you have to consider all positions.</p>

<p style="text-align: right;">Page 134</p> <p>1 You don't necessarily have to support it, but you 2 consider them all. Is that fair? 3 A. Yes. 4 Q. Okay. 5 All right. Moving on to No. 4. This one 6 seems substantially similar to a lot of things we've 7 already talked about, but it specifies on pain 8 management. Again you use the word "untreated." He 9 was receiving Naproxen twice a day, but yet you use 10 the word "untreated." Why is that? 11 A. Right. So when you are treating somebody 12 in severe pain, it's imperative to actually do an 13 assessment to get kind of the starting point and then 14 to implement a treatment plan and then to reassess 15 the patient for whether that treatment plan has -- is 16 efficacious. 17 Q. Okay. 18 A. So that did not occur in this case, and 19 in that sense, although he was given Naproxen, it was 20 unsuccessful in treating his severe pain, which 21 really amounts to an ineffective and inadequate 22 treatment for his condition, which should have been a 23 very good clue that you had another process going on 24 that did not respond to merely Naproxen. 25 Q. And that's because he was recording pain</p>	<p style="text-align: right;">Page 136</p> <p>1 three different medications that he was on was 2 working for him even though he still had some 3 residual pain. 4 Q. Okay. But if the records reflect that he 5 said that the medications were not managing his pain, 6 then would you agree with me that that would have put 7 them on alert that there was some other -- some other 8 illness involved? 9 A. Yes, it should have put them on alert 10 that they needed to look harder for what was going on 11 or they needed to change the treatment plan. 12 Q. Okay. 13 And his reporting pain at a level of nine 14 or ten when he got to jail, that would not be 15 indicative of a change in his condition; right? That 16 alone would not be indicative of a change in 17 condition because he had already previously reported 18 pain levels at that rate. Is that fair? 19 MR. BLAKEMORE: Object to form. 20 A. That's correct. The real change in his 21 presentation was the emergence and the progression of 22 his neurological findings. 23 Q. Okay. 24 All right. No. 5, your last, it says: 25 "Had Mr. Buchanan's situation been taken seriously</p>
<p style="text-align: right;">Page 135</p> <p>1 ten out of ten, nine out of ten; is that right? 2 A. Right, pain with loss of function; so in 3 that scenario, you know, Naproxen is not really a 4 medication that you would think of using. But really 5 the important part is that the pain and the failure 6 to respond to low-level intervention is a very good 7 clinical clue that you've got a bigger problem on 8 your hands and you need to look harder. 9 Q. So then if he had reported to -- before 10 he came to jail, before he was incarcerated, if he 11 had reported that the pain medications he was taking 12 to another provider -- he reported this to another 13 provider -- sorry. Let me start over. Strike that. 14 We know that he went to the ER at 15 St. John's. He went to Dr. Trinidad and he went to 16 Dr. Greenhaw before he came to Muskogee County Jail. 17 If he had reported to one of them that his pain 18 medications were not effective along with the 19 decreased range of motion that he reported, then 20 should they have been on lookout for something else? 21 MR. BLAKEMORE: Object to form. 22 A. Sure. And that really comes down to a 23 judgment call based on your assessment of the patient 24 and the efficacy of those medications. In reading 25 their notes, the overall treatment plan with the</p>	<p style="text-align: right;">Page 137</p> <p>1 and his symptoms been properly considered and his 2 situation properly evaluated, he could have been 3 easily treated for his underlying condition and 4 retained his neurologic function." 5 Now, I'm pretty sure we've covered just 6 about all of that already, except when you say "had 7 his situation been taken seriously." Have you seen 8 anything in the records you reviewed that indicate 9 that his symptoms and his condition were not taken 10 seriously by any of the correctional or medical 11 staff? 12 A. Yes. I would answer that in two ways. 13 The first is -- is what's not in the records, because 14 he had complaints -- so there was complaints of 15 progression. There was no prescriber who ever came 16 in to see him to do a proper evaluation of his 17 situation; so that is a problem. Had they seen him, 18 had they done a proper assessment, they likely would 19 have seen his progression and his neurological issues 20 and sent him out for definitive care in a timely 21 fashion. 22 The other piece that is concerning is 23 this note from LPN McCullar on DDR 012, dated 24 11/14/16, where she calls Dr. Cooper to indicate to 25 him that the patient is having worsening pain and</p>

<p style="text-align: right;">Page 138</p> <p>1 inability to move his lower extremities. Those are</p> <p>2 red-flag findings, and it's just not appropriate at</p> <p>3 all for the response from the doctor to be to put him</p> <p>4 on the list to be seen in the next few days.</p> <p>5 Q. Okay. I guess part of my question was</p> <p>6 have you seen anything that reflects anybody thought</p> <p>7 he was faking his injuries? Directly states that, I</p> <p>8 should say. Have you seen anything to that nature?</p> <p>9 A. I do not see anything there that uses</p> <p>10 those words exactly.</p> <p>11 Q. Okay.</p> <p>12 I know you didn't know this until today</p> <p>13 when I showed you the records, but do you find it odd</p> <p>14 that instead of following up with his neurosurgeon</p> <p>15 after his discharge from St. John he sought to follow</p> <p>16 up with a chiropractor and a pain management</p> <p>17 physician?</p> <p>18 MR. BLAKEMORE: Object to form.</p> <p>19 A. No. I find that to be pretty normal,</p> <p>20 unfortunately. I don't think it's appropriate, but</p> <p>21 getting an appointment with a neurosurgeon in the</p> <p>22 community is a very daunting task.</p> <p>23 Q. I think that according to the discharge</p> <p>24 instructions he had an appointment that was set for</p> <p>25 approximately ten days later, and he was instructed</p>	<p style="text-align: right;">Page 140</p> <p>1 A. No. That's the total.</p> <p>2 Q. Okay. I'm going to switch -- I'm going</p> <p>3 to kind of jump around to try to understand things.</p> <p>4 I'm just going to go through my notes as we've been</p> <p>5 going.</p> <p>6 Wellcon is the company that you created</p> <p>7 that contracts with the Salt Lake County Jail System;</p> <p>8 is that correct?</p> <p>9 A. That's correct.</p> <p>10 Q. And Wellcon provides the medical care for</p> <p>11 the Salt Lake County Jail System; is that correct?</p> <p>12 A. Not exactly. We provide part of the care</p> <p>13 in that system.</p> <p>14 Q. Kind of like Turn Key contracts to</p> <p>15 provide medical care in this case at the Muskogee</p> <p>16 County Detention Center. Is that kind of what --</p> <p>17 you're like Turn Key, and you contract and you</p> <p>18 provide services that will come into the jail and run</p> <p>19 the medical for the jail?</p> <p>20 A. No, they're not exactly comparable.</p> <p>21 Q. Okay. How is it different?</p> <p>22 A. In our system here in Salt Lake County,</p> <p>23 the nurses and support staff and mental health staff</p> <p>24 are all county employees, and Wellcon provides</p> <p>25 prescribers.</p>
<p style="text-align: right;">Page 139</p> <p>1 to get some imaging done before returning.</p> <p>2 A. Mm-hmm.</p> <p>3 MR. YOUNG: All right. I'm going to pass</p> <p>4 the witness. Thank you, Doctor.</p> <p>5 MR. ARTUS: Do you need to take a break,</p> <p>6 or do you want to just go?</p> <p>7 THE WITNESS: I think we just had a break;</p> <p>8 so I'm probably okay for a little bit.</p> <p>9 MR. ARTUS: All right. I just want to do</p> <p>10 a little housekeeping. Do you have that invoice?</p> <p>11 MR. YOUNG: Oh.</p> <p>12 MR. ARTUS: I don't know what our next</p> <p>13 exhibit is, but I just want to put into the record --</p> <p>14 MR. YOUNG: Thirteen.</p> <p>15 (Exhibit 13 was marked.)</p> <p>16 EXAMINATION</p> <p>17 BY MR. ARTUS:</p> <p>18 Q. Defendants' Exhibit 13, which is the</p> <p>19 invoice dated -- it says May 19th, 2019, for \$10,800.</p> <p>20 It's defendants' Exhibit 13 that was emailed to me</p> <p>21 today by your attorney -- or not by your attorney but</p> <p>22 Bob Blakemore, who has retained you. Is that the</p> <p>23 total that you have incurred in reviewing and getting</p> <p>24 your opinions up to May 19th, 2019, or is there more</p> <p>25 than that?</p>	<p style="text-align: right;">Page 141</p> <p>1 Q. Prescribers meaning doctors or APRNs or</p> <p>2 what?</p> <p>3 A. Doctors, APRNs, physician assistants, but</p> <p>4 we don't -- we don't provide the nurses. We don't</p> <p>5 provide the pharmacy services. We don't provide the</p> <p>6 mental health staff as far as, like, the counselors</p> <p>7 and that sort of thing.</p> <p>8 Q. So Wellcon, you are basically contracting</p> <p>9 the clinicians, the people that come in and see the</p> <p>10 inmates and prescribe.</p> <p>11 A. That's right.</p> <p>12 Q. And then the county, Salt Lake County,</p> <p>13 they have nurses on as their employees; is that</p> <p>14 correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And how many inmates on average does Salt</p> <p>17 Lake County Jail have?</p> <p>18 A. Approximately 2200.</p> <p>19 Q. So much bigger than Muskogee County.</p> <p>20 A. Yes.</p> <p>21 Q. Or the detention center.</p> <p>22 And how many physicians take care of</p> <p>23 these 2200 inmates?</p> <p>24 A. Well, we have a number of clinicians who</p> <p>25 participate in care inside the jail. I would</p>

<p style="text-align: right;">Page 142</p> <p>1 estimate it's about eighteen.</p> <p>2 Q. How many of them are medical doctors?</p> <p>3 A. Let's see. Sixteen of those eighteen are</p> <p>4 medical doctors.</p> <p>5 Q. And then the other two are what?</p> <p>6 A. One is an APRN and one is a PA.</p> <p>7 Q. And do those 16 -- and when do you</p> <p>8 have -- when you do clinicals -- is that the proper</p> <p>9 term where inmates that need to be seen by a</p> <p>10 prescriber will see them? Is that what you would</p> <p>11 call a clinical?</p> <p>12 A. Well, yeah. Probably I would just call</p> <p>13 it a clinic.</p> <p>14 Q. Okay.</p> <p>15 A. But there's different clinical functions</p> <p>16 that exist inside the jail. So within the general</p> <p>17 population setting, which is sort of an ambulatory</p> <p>18 care setting, we would do clinics, and on any given</p> <p>19 weekday there would be between three and six separate</p> <p>20 clinics that operate on each day. On the weekends</p> <p>21 there would be one or two clinics depending upon the</p> <p>22 day and the schedule. And then in addition to that</p> <p>23 we have in-patient units where the clinicians come in</p> <p>24 and round on the patients who are admitted into those</p> <p>25 units on a daily basis.</p>	<p style="text-align: right;">Page 144</p> <p>1 nurses, something like that, and they're all RNs.</p> <p>2 Q. What is the budget for Wellcon, Inc. and</p> <p>3 Salt Lake City County Jail System? How much do they</p> <p>4 pay a month for your services?</p> <p>5 A. It's paid on a man-day; so --</p> <p>6 Q. What does that mean, a "man-day"?</p> <p>7 A. A prisoner that is in house for one day.</p> <p>8 Q. Okay.</p> <p>9 A. I'd have to look up what the current rate</p> <p>10 is.</p> <p>11 Q. How much per prisoner?</p> <p>12 A. Well, I'd have to look up exactly what it</p> <p>13 is right now because it's split over a couple of</p> <p>14 different contracts; so I don't know the exact</p> <p>15 amount, but it's probably \$1.90 or so.</p> <p>16 Q. \$1.90 per inmate?</p> <p>17 A. Uh-huh.</p> <p>18 Q. So you'd multiply that if you had -- like</p> <p>19 you said, if we had 2200, that's how much it would be</p> <p>20 a day?</p> <p>21 A. Right.</p> <p>22 Q. And as you've been doing your deposition</p> <p>23 today, you've been taking texts from medical staff;</p> <p>24 is that correct?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 143</p> <p>1 Q. And in your system are there physicians</p> <p>2 at the jail 24/7?</p> <p>3 A. No.</p> <p>4 Q. Are there nurses at the jail 24/7?</p> <p>5 A. Yes.</p> <p>6 Q. And the clinics that happen each day, are</p> <p>7 they eight hours long, or are they two hours? How</p> <p>8 long are they?</p> <p>9 A. No. The clinics that happen each day are</p> <p>10 really more scheduled based on number of patients,</p> <p>11 and they go as long as they need to go; so we don't</p> <p>12 really do it quite by time. And the clinics are</p> <p>13 really sort of set up to fit between meal times so</p> <p>14 that we're not disrupting the meal times of the</p> <p>15 prisoners.</p> <p>16 Just to be clear, so all of our RNs who</p> <p>17 work for the county, they're all RNs. We don't have</p> <p>18 any LPNs.</p> <p>19 Q. Okay. I thought you said 16 medical</p> <p>20 doctors. Do you have 16 RNs?</p> <p>21 A. No. So 16 medical doctors, one APRN, and</p> <p>22 one PA.</p> <p>23 Q. Right. And then the nurses?</p> <p>24 A. And then what I was referencing are the</p> <p>25 nurses. We have about -- I don't know -- 55 or 60</p>	<p style="text-align: right;">Page 145</p> <p>1 Q. Who is covering your shift today?</p> <p>2 A. Well, today there are multiple physicians</p> <p>3 on site doing clinics, and then I'm doing some</p> <p>4 administrative work once we finish here.</p> <p>5 Q. As I understood your testimony, you're</p> <p>6 not really -- well, first of all, do you have any</p> <p>7 hospital privileges?</p> <p>8 A. No. I don't need hospital privileges</p> <p>9 with my current job.</p> <p>10 Q. When was the last time you did surgery?</p> <p>11 A. Well, it depends on what you mean by</p> <p>12 surgery. We do lots of minor surgery with local</p> <p>13 anesthesia on a fairly routine basis, but in the</p> <p>14 operating room under general anesthesia was back when</p> <p>15 I was a resident.</p> <p>16 Q. And that was back in '96?</p> <p>17 A. Yeah.</p> <p>18 Q. Is that right?</p> <p>19 A. That's right.</p> <p>20 Q. Okay.</p> <p>21 Now, have you been sued in your capacity</p> <p>22 as a medical -- a medical provider in a jail?</p> <p>23 A. Yes.</p> <p>24 Q. And how many times?</p> <p>25 A. Oh, I think a couple of times, and then</p>

<p>Page 146</p> <p>1 the county gets sued on a regular basis and</p> <p>2 oftentimes we get named in those suits, and a lot of</p> <p>3 times I don't even know about those.</p> <p>4 Q. What about the Ostler case, O-s-t-l-e-r</p> <p>5 case? Is that still going on?</p> <p>6 A. Yeah. I think they're in some discovery</p> <p>7 on that case.</p> <p>8 Q. Is that regarding an inmate found dead of</p> <p>9 infection in her abdomen?</p> <p>10 A. Yes.</p> <p>11 Q. And have you been named in that case?</p> <p>12 A. I think so. I can't remember if it was</p> <p>13 just Wellcon that got named or whether I got named</p> <p>14 individually. I'd have to go back and look.</p> <p>15 Q. What's the allegation there?</p> <p>16 A. The allegation there really is more at</p> <p>17 the county level with the nurses than it is anything;</p> <p>18 so the allegation for me is a supervisory deficiency.</p> <p>19 Q. And what's the allegation against the</p> <p>20 nurses?</p> <p>21 A. That they didn't respond in a timely</p> <p>22 fashion to a patient who had a medical problem.</p> <p>23 Q. The infection in her abdomen?</p> <p>24 A. Yes, that nobody knew about.</p> <p>25 Q. And what about the Aus case, A-u-s? Is</p>	<p>Page 148</p> <p>1 element.</p> <p>2 Q. Right.</p> <p>3 Your primary job is the director for</p> <p>4 Wellcon, which is really providing medical care to</p> <p>5 the jail; is that correct?</p> <p>6 A. Right.</p> <p>7 Q. But you also on the side do consulting</p> <p>8 work; right?</p> <p>9 A. Sometimes, yes.</p> <p>10 Q. And you give how many depositions a year, doing</p> <p>11 depositions as a consultant?</p> <p>12 A. Well, there's a list of my depositions.</p> <p>13 I think in the last four years I probably have</p> <p>14 done -- I don't know -- eight.</p> <p>15 Q. I read a prior deposition you gave where</p> <p>16 you said you give about four or five depositions a year as</p> <p>17 an expert in consulting. Does that sound right to</p> <p>18 you or not?</p> <p>19 A. Yeah. It just is so variable. Sometimes</p> <p>20 you'll have a couple in a row and then go for a long</p> <p>21 period of time. I think on the list that I have</p> <p>22 right now spans four years, and I'm guessing that</p> <p>23 there's eight to ten cases that were given</p> <p>24 depositions over that period of time.</p> <p>25 Q. Can you testify for the jury with any</p>
<p>Page 147</p> <p>1 that still ongoing?</p> <p>2 A. I think so.</p> <p>3 Q. Is that a case about a plaintiff who had</p> <p>4 a congenital brain cyst and died of complications in</p> <p>5 jail?</p> <p>6 A. Right.</p> <p>7 Q. And what are the allegations against you</p> <p>8 in that case?</p> <p>9 A. Again that's a supervisory issue. I</p> <p>10 never saw the patient as a clinician. But the</p> <p>11 allegations are that somehow a congenital problem</p> <p>12 that caused his death -- or that -- well, how do I</p> <p>13 say it? I'm not sure I even understand what the</p> <p>14 allegations are. The allegations are that he should</p> <p>15 have been given a benzodiazepine that somehow would</p> <p>16 have altered a congenital medical problem.</p> <p>17 Q. Okay. So is it mostly against the nurses</p> <p>18 or against the physicians for not properly assessing</p> <p>19 him?</p> <p>20 A. Well, it's really mostly with the nurses</p> <p>21 and primarily with the mental health clinical staff.</p> <p>22 Q. Okay. Again for not recognizing that he</p> <p>23 had a congenital brain cyst; right?</p> <p>24 A. Right. I don't -- nobody knew that he</p> <p>25 had this congenital brain cyst. It was an unknown</p>	<p>Page 149</p> <p>1 medical degree of certainty when Mr. Buchanan in this</p> <p>2 case had developed -- first started developing an</p> <p>3 epidural abscess?</p> <p>4 MR. BLAKEMORE: Object to form.</p> <p>5 A. Well, as we talked about in the previous</p> <p>6 version of this, you'd have to sort of define that</p> <p>7 with respect to, you know, the initiation of the</p> <p>8 infectious process versus when it became clinically</p> <p>9 evident.</p> <p>10 Q. Well, I think what I heard you say, and</p> <p>11 correct me if I'm wrong, was you don't think he had</p> <p>12 the epidural abscess before he went in the jail. You</p> <p>13 think he got it while he was in the jail. Is that</p> <p>14 correct?</p> <p>15 A. That's correct.</p> <p>16 Q. What is the basis for that opinion?</p> <p>17 A. The basis for that opinion is my</p> <p>18 experience with these types of patients as well as</p> <p>19 knowledge of the typical clinical course for</p> <p>20 staphylococcus aureus infections.</p> <p>21 Q. In other words, it grows fast, and so you</p> <p>22 think it must have developed fast.</p> <p>23 A. Right.</p> <p>24 Q. And when you say "these type of</p> <p>25 patients," what do you mean, "these type of</p>

<p style="text-align: right;">Page 150</p> <p>1 patients"?</p> <p>2 A. Well, patients with epidural abscesses.</p> <p>3 Q. Okay. And how many epidural abscesses do</p> <p>4 you have in your jail per year?</p> <p>5 A. Oh, it would be less than one. It's not</p> <p>6 a particularly common condition. But over my career</p> <p>7 I've taken care of several patients with epidural</p> <p>8 abscesses.</p> <p>9 Q. So your career goes back to the '90s,</p> <p>10 early '90s; is that right?</p> <p>11 A. That's right.</p> <p>12 Q. What year did you become a medical</p> <p>13 doctor?</p> <p>14 A. Let's see. 1990, I think.</p> <p>15 Q. So since 1990 how many epidural abscesses</p> <p>16 do you think you've treated in your career?</p> <p>17 A. Five. Let me be clear. Five as acute</p> <p>18 presentations. We've had a number of patients who</p> <p>19 have come to us after they've had an epidural abscess</p> <p>20 and we've managed them kind of in the aftermath</p> <p>21 phase.</p> <p>22 Q. So five acute presentations. That means</p> <p>23 they've got symptoms, and so you're treating them for</p> <p>24 those symptoms?</p> <p>25 A. Right. So I guess to be more clear, they</p>	<p style="text-align: right;">Page 152</p> <p>1 started; right?</p> <p>2 A. Sure.</p> <p>3 Q. And he's given several different</p> <p>4 testimonies. He's told the doctors one thing and in</p> <p>5 his deposition he's told another thing, and in his</p> <p>6 deposition he said he's been diagnosed with short</p> <p>7 term and long term memory problems. Did you see</p> <p>8 that?</p> <p>9 A. Mm-hmm.</p> <p>10 Q. Was that a yes?</p> <p>11 A. Yes. Sorry.</p> <p>12 Q. In fact, did you read his brother's</p> <p>13 testimony?</p> <p>14 A. I did not.</p> <p>15 Q. You haven't read Stan Buchanan's</p> <p>16 deposition testimony?</p> <p>17 A. I have not.</p> <p>18 Q. Well, he testified that his brother has</p> <p>19 had memory problems since before he was 13 or 14.</p> <p>20 Were you aware of that?</p> <p>21 MR. BLAKEMORE: Object to form.</p> <p>22 A. No.</p> <p>23 Q. Okay. So if that is true, I mean,</p> <p>24 you're -- an accurate history, if Mr. Buchanan's</p> <p>25 testimony as to when he couldn't use his -- start</p>
<p style="text-align: right;">Page 151</p> <p>1 developed symptoms, they had clinical findings, we</p> <p>2 identified those clinical findings and sent them out</p> <p>3 for definitive care, and the care was done at the</p> <p>4 hospital.</p> <p>5 Q. Okay. And when you have an epidural</p> <p>6 abscess, that's what you do, you send them to the</p> <p>7 hospital; right?</p> <p>8 A. Correct.</p> <p>9 Q. So as soon as you notice something like</p> <p>10 that, that's what you do, you send them to the</p> <p>11 hospital; right?</p> <p>12 A. Right. You have to have a low index of</p> <p>13 suspicion based on the presentation of</p> <p>14 neurological -- changes in their neurological</p> <p>15 presentation.</p> <p>16 Q. I think counsel for Turn Key had you</p> <p>17 testify about plaintiff's memory problems. Would you</p> <p>18 agree that he is not a reliable historian?</p> <p>19 MR. BLAKEMORE: Object to form.</p> <p>20 A. Well, I think that there are elements of</p> <p>21 his testimony that probably are reliable. I don't</p> <p>22 think it's all unreliable, but I suspect that he has</p> <p>23 some difficulties with some detail recall.</p> <p>24 Q. Well, in this case what's going to be</p> <p>25 absolutely critical is when his symptoms actually</p>	<p style="text-align: right;">Page 153</p> <p>1 using his left arm and when he stopped using his</p> <p>2 right -- let me rephrase that because I was jumbling</p> <p>3 my words.</p> <p>4 In this case if Mr. Buchanan's testimony</p> <p>5 is not reliable as to when he could not -- when he</p> <p>6 started not being able to use his left arm and then</p> <p>7 not being able to use his right arm, that's very</p> <p>8 important; right?</p> <p>9 A. It can be, although it's a symptom that</p> <p>10 would present over a range of time which is fairly</p> <p>11 short.</p> <p>12 Q. Like, for example, he told Dr. Baird, "I</p> <p>13 couldn't use my left arm at the very first. I</p> <p>14 couldn't even use it. It was completely paralyzed</p> <p>15 day one I was in the jail." And then in his</p> <p>16 deposition he said -- he started saying that, and</p> <p>17 then he said, "Well, no. It was on day six." Did</p> <p>18 you see that?</p> <p>19 MR. BLAKEMORE: Object to form.</p> <p>20 A. I did.</p> <p>21 Q. And then we have the video, which was on</p> <p>22 the 11th, and he can still use his arms, can't he?</p> <p>23 A. In a limited fashion, yes.</p> <p>24 Q. Sure. But it's not like he described in</p> <p>25 his deposition; correct?</p>

<p style="text-align: right;">Page 154</p> <p>1 A. Well, it's not paralysis.</p> <p>2 Q. Right. And he can certainly use his</p> <p>3 legs.</p> <p>4 A. Yes.</p> <p>5 Q. Now, when Mr. Buchanan -- now, inmates,</p> <p>6 when they come into the jail, it's not unusual for an</p> <p>7 inmate in their fifties to come in with already</p> <p>8 having a restricted range of movement or motion;</p> <p>9 isn't that correct? That happens all the time;</p> <p>10 right?</p> <p>11 A. Well, that can happen. I don't know -- I</p> <p>12 don't have any sense of numbers or percentage.</p> <p>13 Q. Well, there are people who come in who</p> <p>14 have already had injuries in their earlier life where</p> <p>15 now they have -- they can't use their arm as well or</p> <p>16 they can't use their neck as well; right?</p> <p>17 A. Correct.</p> <p>18 Q. And everybody who comes in with a</p> <p>19 restricted range of motion doesn't have an epidural</p> <p>20 abscess; right?</p> <p>21 A. That's correct.</p> <p>22 Q. Now, Mr. Buchanan came in -- was booked</p> <p>23 into the jail on November 3rd, 2016, and he was seen</p> <p>24 by Nurse Kotas as an initial assessment. Is there</p> <p>25 anything wrong with doing an initial assessment, with</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. And there's no requirements under the</p> <p>2 Oklahoma jail standards that says a nurse has to do</p> <p>3 an initial assessment. Are you aware of that?</p> <p>4 A. I am not specifically aware of that, no.</p> <p>5 Q. And you talk about NCC -- I can't</p> <p>6 remember what you called it. NCCHA or something like</p> <p>7 that. What is that?</p> <p>8 A. NCCHC.</p> <p>9 Q. Yeah. There's no legal requirement in</p> <p>10 Oklahoma that that be followed, that the NCCHC be</p> <p>11 followed, is there? Are you aware of that?</p> <p>12 A. I'm not aware that there's any</p> <p>13 requirement to follow NCCHC standards.</p> <p>14 Q. All right.</p> <p>15 Now, when Nurse Kotas did her initial</p> <p>16 assessment of Mr. Buchanan, she passed it on, puts it</p> <p>17 in a box, and based on that he's brought up to</p> <p>18 medical the next day, on the 4th. Is there anything</p> <p>19 wrong with that?</p> <p>20 A. No.</p> <p>21 Q. And then Nurse Mc -- is it McCullar? --</p> <p>22 McCullar sees him, and then she calls Dr. Cooper on</p> <p>23 the phone, relays what she has said, and he orders</p> <p>24 Naproxen. Is there anything illegal about that?</p> <p>25 A. No. It's really not -- I mean, he should</p>
<p style="text-align: right;">Page 155</p> <p>1 having an LPN meet with an inmate when he first comes</p> <p>2 in to go over a form to just find out what his --</p> <p>3 what -- what his situation is medically?</p> <p>4 MR. BLAKEMORE: Object to form.</p> <p>5 Q. (BY MR. YOUNG) Is there anything wrong</p> <p>6 with doing that?</p> <p>7 MR. BLAKEMORE: Object to form.</p> <p>8 A. There's nothing wrong with collecting</p> <p>9 basic screening information by an LPN.</p> <p>10 Q. And do you have any criticism of any of</p> <p>11 the defendants for having Nurse Kotas do an</p> <p>12 assessment of Mr. Buchanan on November 3rd, 2016?</p> <p>13 A. Well, sure. We've talked about that.</p> <p>14 LPNs are not -- it is not appropriate and within the</p> <p>15 scope of practice for an LPN to do an assessment.</p> <p>16 Q. Well, a lot of jails in Oklahoma don't</p> <p>17 even have any LPNs working at all. Are you aware of</p> <p>18 that?</p> <p>19 A. I am.</p> <p>20 Q. And there's no requirement under Oklahoma</p> <p>21 law to even have 24-hour, 7-day-a-week nurses. You</p> <p>22 understand that; right?</p> <p>23 A. Yes.</p> <p>24 Q. But here, Muskogee has them 24/7; right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 157</p> <p>1 be seeing the patient.</p> <p>2 MR. BLAKEMORE: Did you say illegal?</p> <p>3 MR. ARTUS: Yeah.</p> <p>4 THE WITNESS: He should be seeing the</p> <p>5 patient as part of that process, and I have criticism</p> <p>6 of that, but -- or not necessarily he, but one of the</p> <p>7 prescribers should have seen the patient.</p> <p>8 Q. (BY MR. ARTUS) Well, if -- so would you</p> <p>9 rather that he just say, "Well, we're not going to</p> <p>10 give him any Naproxen until I come in on next" -- you</p> <p>11 know, in two days or whenever he's coming in for his</p> <p>12 clinical? Would you rather him just say, "I'm not</p> <p>13 going to give -- don't give him any kind of medicine</p> <p>14 at all until I see him before we give it to him"? Is</p> <p>15 that better, or is it better for him to just say,</p> <p>16 "Let's get him on Naproxen right now. That's what I</p> <p>17 think -- based on what you're telling me, that's what</p> <p>18 I think he needs. I want you to -- I'm going to</p> <p>19 write the script for that"?</p> <p>20 A. So I think it's reasonable to write a</p> <p>21 bridging prescription and then to assess the patient</p> <p>22 thereafter.</p> <p>23 Q. Okay. And then he was scheduled to be</p> <p>24 seen on the 6th. Well, at least that's when the note</p> <p>25 is. He was put on the sick call list on the 6th to</p>

<p>Page 158</p> <p>1 be seen the next time. We don't know why he wasn't 2 seen. 3 A. Well, my understanding was that that was 4 a nursing sick call, not a provider sick call. 5 Q. And where did you get that? 6 A. I think that's from the depositions. I'd 7 have to go back and look at that. The process is 8 confusing, but as I understand it, that was a nursing 9 sick call, and there was not any sort of note 10 generated as a result of that. 11 Q. And again that was for shoulder pain, not 12 paralysis; right? 13 A. Right. 14 Q. Now, meanwhile, once the prescription 15 started on the 4th, November 4th, 2016, then we have 16 LPNs seeing him in the morning and the evening; 17 right? At least according to the MAR; right? 18 A. For medication pass. That's right. 19 Q. And Buchanan says it was only once a day; 20 right? 21 A. That's what he says. 22 Q. But the other inmates who have been 23 deposed all agree it was two times a day. 24 MR. BLAKEMORE: Object to form. 25 A. I don't know that. I have not seen those</p>	<p>Page 160</p> <p>1 know. I think they -- what they did is they put him 2 on for a sick call. 3 Q. Okay. Well, the next time we know that 4 he's put on sick call is on November 11th, 2016; 5 right? 6 A. Correct. 7 Q. And on that day we know earlier in the 8 day he has a video visitation with his brother; 9 right? 10 A. I'd have to look at the date of that, but 11 that's probably correct. 12 Q. And you've seen that video; correct? 13 A. I have. 14 Q. Now, do you believe that the description 15 by Nurse Kotas -- and then she sees him later on that 16 day; so somehow somebody got to her, for her to look 17 at him and put him on sick call. Right? 18 A. Well, I don't really know what happened. 19 There's no note. 20 Q. Well, we've taken her depo, and she -- 21 she saw him and she wrote down what's written in that 22 note and puts him on sick call; right? 23 A. Yes, but, I mean, there's no -- I mean, 24 that's not really an assessment. So... 25 Q. What is inappropriate with her seeing</p>
<p>Page 159</p> <p>1 depositions. 2 Q. Okay. 3 And again this would be another symptom 4 of Mr. Buchanan having poor memory; right? 5 A. Possibly. 6 Q. And those LPNs, they go and they see him 7 and pass the medication, they make sure he takes it, 8 and at that time he can tell them, "Hey, I've lost 9 the use of my left arm," or "I've lost the use of my 10 right arm." Right? 11 MR. BLAKEMORE: Object to form. 12 A. That's correct. 13 Q. And if he says that to them -- if he 14 says, "Hey, I've lost the use of my left arm," then 15 they should see him; right? 16 A. That's correct. 17 Q. And we know on the 15th -- so that's 18 happening two times a day every day; right? 19 A. That's right. 20 Q. Now, do you believe that the nurses just 21 heard him say that and then just deliberately and 22 indifferently just said, "I'm not going to see you"? 23 MR. BLAKEMORE: Objection. Calls for a 24 legal conclusion. 25 A. So the conclusion for that I don't really</p>	<p>Page 161</p> <p>1 him, writing down, "Hey, I think he's getting worse. 2 Let's put him on -- I want him to see the doctor"? 3 A. Well there's nothing wrong with that. 4 What's wrong is that he wasn't seen by any of the 5 clinicians. 6 Q. Would it have been better of her to just 7 say, "Let's send him to the hospital right now"? 8 A. Well, yes. He would have been seen by a 9 clinician. 10 Q. Right. But evidently she didn't think it 11 was that bad, and she put him on sick call to be seen 12 by a clinician; right? 13 A. I think that's what happened, yes. 14 Q. Okay. And so can you testify whether she 15 was deliberately indifferent from there? She could 16 say, "Oh, wow. He really needs to go to the 17 hospital. I'm not going to send him." Or do you 18 think she was more like, "I don't know. I'm going to 19 have him be seen by our doc and let him look him 20 over"? 21 MR. BLAKEMORE: Object to form and object 22 as it calls for a legal conclusion. 23 A. Well, I don't really know her thought 24 process on that. It would have been nice if there 25 had been some objective data and involvement with the</p>

<p style="text-align: right;">Page 162</p> <p>1 on-call clinicians in making those decisions.</p> <p>2 Q. So you're saying she could have done more</p> <p>3 and didn't; is that right?</p> <p>4 A. Correct.</p> <p>5 Q. Now, her note says: "Decreased range of</p> <p>6 motion up and down extremities. Neck limited range</p> <p>7 of motion and pain." But it doesn't say paralyzed;</p> <p>8 right?</p> <p>9 MR. BLAKEMORE: Can you say what you're</p> <p>10 reading from for the record, please.</p> <p>11 MR. ARTUS: This is from DDR 30, 515, what</p> <p>12 is marked as defendants' Exhibit 9.</p> <p>13 MR. BLAKEMORE: Thank you.</p> <p>14 THE WITNESS: That's correct.</p> <p>15 Q. (BY MR. ARTUS) And this is Nurse Kotas.</p> <p>16 We know that; right?</p> <p>17 A. Yes.</p> <p>18 Q. She's the same one who did see him on the</p> <p>19 14th and noticed that he'd even gotten worse and did</p> <p>20 send him to the hospital at that time; right?</p> <p>21 A. Yes. She sent him out on the 14th at</p> <p>22 2010 after consulting Dr. Cooper.</p> <p>23 Q. Right. So she knows, Hey, he's gotten --</p> <p>24 he's gotten even worse. I'm calling Dr. Cooper.</p> <p>25 And she even testified, "Even if Dr. Cooper said</p>	<p style="text-align: right;">Page 164</p> <p>1 and licensed individuals.</p> <p>2 Q. And on the 14th when they realized, Hey,</p> <p>3 this guy has got some serious problems and needs to</p> <p>4 go to the hospital, they send him to the hospital;</p> <p>5 right?</p> <p>6 A. That's correct.</p> <p>7 Q. And up until that point they didn't make</p> <p>8 the connections in their heads, for whatever reason,</p> <p>9 to send him to hospital; right?</p> <p>10 A. Correct.</p> <p>11 Q. Now, is it -- there's nothing wrong with</p> <p>12 contracting with a medical provider to provide</p> <p>13 medical care in a jail; right?</p> <p>14 A. I agree with that.</p> <p>15 Q. In fact, that's what they're doing in</p> <p>16 your jail; right?</p> <p>17 A. Well, partially, yes.</p> <p>18 Q. Okay. And do you agree that the policies</p> <p>19 at the jail require medical care to be given to</p> <p>20 inmates?</p> <p>21 MR. BLAKEMORE: Object to form.</p> <p>22 A. In general, yes.</p> <p>23 Q. And that if a jailer knew an inmate was</p> <p>24 in a serious medical need and then did not call</p> <p>25 medical to have it looked at that that would be a</p>
<p style="text-align: right;">Page 163</p> <p>1 don't send him to the hospital," she said, "I was</p> <p>2 sending him anyway." Do you remember reading that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So we know she's got the moxie to</p> <p>5 send him to the hospital because she did; right?</p> <p>6 MR. BLAKEMORE: Object to form.</p> <p>7 Q. (BY MR. ARTUS) Right?</p> <p>8 A. Sure.</p> <p>9 Q. And on the 15th the same woman who -- I</p> <p>10 mean on the 11th, the same woman on the 14th said,</p> <p>11 "We're going to send him to the hospital," on the</p> <p>12 11th when she sees him, she is thinking, Hmm. I</p> <p>13 think he needs to be seen by the doctor so he can</p> <p>14 decide, but she's not thinking, He's so bad where</p> <p>15 I've got to send him to the hospital, like she was on</p> <p>16 the 14th. Do you agree with that?</p> <p>17 MR. BLAKEMORE: Object to form.</p> <p>18 A. Well, I think that's adding her thought</p> <p>19 process into this without really having evidence of</p> <p>20 that, but...</p> <p>21 Q. Well, you can't -- you can't say, can</p> <p>22 you, Doctor, that -- that Mr. Buchanan was denied</p> <p>23 medical care, can you, because he's was seen 24 times</p> <p>24 by medical people; right?</p> <p>25 A. Yes, just not the appropriately trained</p>	<p style="text-align: right;">Page 165</p> <p>1 violation of policy? Would you agree with that?</p> <p>2 A. Well, I would have to review the custody</p> <p>3 policies and procedures to answer that probably.</p> <p>4 Q. Okay. That was my next question. Have</p> <p>5 you reviewed the policies and procedures of the</p> <p>6 Muskogee County Detention Center?</p> <p>7 A. I have not.</p> <p>8 Q. Are you going to offer any opinions on</p> <p>9 that?</p> <p>10 A. No.</p> <p>11 Q. Okay.</p> <p>12 What is your knowledge as to the Board of</p> <p>13 County Commissioner of Muskogee County's role in</p> <p>14 running the jail? Do you know anything about that?</p> <p>15 A. I don't know exactly their role. Like</p> <p>16 most governmental entities at this level, they</p> <p>17 probably have a funding role primarily.</p> <p>18 Q. Okay. And as far as the sheriff, sheriff</p> <p>19 Rob Frazier, will you be able to testify one way or</p> <p>20 the other about his policies or procedures or the</p> <p>21 policies or procedures that were from the sheriff</p> <p>22 with running the jail?</p> <p>23 A. I have not reviewed them and don't plan</p> <p>24 to offer any opinions about that.</p> <p>25 Q. It sounds to me like your criticisms in</p>

<p style="text-align: right;">Page 166</p> <p>1 this case are with Turn Key and their -- their</p> <p>2 employees. Is that correct?</p> <p>3 MR. BLAKEMORE: Object to form.</p> <p>4 A. I would say that's the majority of my</p> <p>5 criticism, yes.</p> <p>6 Q. And the other criticism I saw was the</p> <p>7 health -- the other one I heard was that the</p> <p>8 health -- the officers did not interfere</p> <p>9 adequately -- or interface adequately. Is that the</p> <p>10 criticism of the jailers?</p> <p>11 A. Yes, and of Turn Key.</p> <p>12 Q. And of Turn Key.</p> <p>13 A. It's a duel, two-way street there.</p> <p>14 Q. Because we know Turn Key employees saw</p> <p>15 him 24 times or whatever it was, 19 times,</p> <p>16 administering medication plus all times we've gone</p> <p>17 over; right?</p> <p>18 A. Right.</p> <p>19 Q. And, again, do you -- would you agree</p> <p>20 it's against policy to deny or hinder an inmate</p> <p>21 access to medical treatment?</p> <p>22 A. Yes.</p> <p>23 Q. So it's not -- so what I understand from</p> <p>24 your opinion is you disagree with the type of medical</p> <p>25 care that was provided. Is that correct?</p>	<p style="text-align: right;">Page 168</p> <p>1 A. When he began complaining of progressive</p> <p>2 neurologic symptoms.</p> <p>3 Q. And what date are you going to testify to</p> <p>4 a jury is that?</p> <p>5 A. Well, that's going to require a little</p> <p>6 bit of working out with regard to his testimony and</p> <p>7 the issues, but it was before the 14th.</p> <p>8 Q. Based on your review of the video on the</p> <p>9 11th of November, just what you could see of him and</p> <p>10 how he was functioning, is it your opinion he should</p> <p>11 have been sent to the hospital on that day?</p> <p>12 A. At least -- at least by then, yes.</p> <p>13 Q. You think even before that?</p> <p>14 A. Probably.</p> <p>15 Q. And why is that?</p> <p>16 A. Just because of the reports of</p> <p>17 progressive neurological loss.</p> <p>18 Q. And again this is all based on</p> <p>19 plaintiff's memory of what happened and when it</p> <p>20 happened; right?</p> <p>21 MR. BLAKEMORE: The video?</p> <p>22 MR. ARTUS: No.</p> <p>23 Q. (BY MR. ARTUS) You're saying before the</p> <p>24 video; right?</p> <p>25 A. Partly, and I believe also review of the</p>
<p style="text-align: right;">Page 167</p> <p>1 MR. BLAKEMORE: Object to form.</p> <p>2 A. Well, I certainly agree -- or I disagree</p> <p>3 with the model of care that's in place and the</p> <p>4 staffing choices for who is delivering the care.</p> <p>5 Q. Now, is it reasonable for a jail staff --</p> <p>6 if an inmate is saying, "Hey, I've got these medical</p> <p>7 problems," is it reasonable for a jail staff to</p> <p>8 contact the medical department and say, "Hey, come</p> <p>9 look at this person, and then rely on what they say,</p> <p>10 you know, either to take them to the hospital or put</p> <p>11 them on sick call," or anything like that? Is it</p> <p>12 reasonable to do that?</p> <p>13 MR. BLAKEMORE: Object to form.</p> <p>14 A. Yes.</p> <p>15 Q. Are you going to offer any opinions as to</p> <p>16 the contract between Turn Key and Muskogee County</p> <p>17 Detention Center?</p> <p>18 A. No.</p> <p>19 Q. Do you have an opinion as to when</p> <p>20 Mr. Buchanan should have been sent to the ER? We</p> <p>21 know he was sent on the 14th. Should he have been</p> <p>22 sent that morning, or should he have been sent</p> <p>23 earlier? Do you have any opinions as to that?</p> <p>24 A. He should have been sent earlier.</p> <p>25 Q. When?</p>	<p style="text-align: right;">Page 169</p> <p>1 depositions of the other prisoners, which I have not</p> <p>2 yet done.</p> <p>3 Q. So Nurse Kotas made a mistake on the</p> <p>4 11th? She should have just sent him to the hospital?</p> <p>5 A. I think so, yes.</p> <p>6 Q. Do you think she did that deliberately?</p> <p>7 A. No.</p> <p>8 Q. Do you think she made a mistake?</p> <p>9 A. I think she's untrained, and she did</p> <p>10 not -- or she's not adequately trained to make that</p> <p>11 decision.</p> <p>12 Q. Do you think she was negligent?</p> <p>13 A. No. I think she was not adequately</p> <p>14 trained to make that decision.</p> <p>15 Q. And do you have an opinion as to who</p> <p>16 trained her?</p> <p>17 A. Well, it really is more of a licensure</p> <p>18 issue. She's making a nursing assessment and</p> <p>19 judgment call about a treatment plan, and that's</p> <p>20 outside the scope of an LPN's licensure.</p> <p>21 Q. Well, anybody in the jail can send</p> <p>22 somebody to the emergency room; right?</p> <p>23 A. Correct.</p> <p>24 Q. You don't have to have a medical degree</p> <p>25 to do that. You can just send them. Correct?</p>

<p style="text-align: right;">Page 170</p> <p>1 A. That's correct.</p> <p>2 Q. So her licensure or anything like that</p> <p>3 didn't make a difference. She could have made the</p> <p>4 decision to send him. Right?</p> <p>5 A. Yes, she could.</p> <p>6 Q. And you're saying that on the 11th when</p> <p>7 she saw him and she made the decision to send him --</p> <p>8 to have Dr. Cooper look at him, you're saying she</p> <p>9 made a mistake and she should have sent him to the</p> <p>10 hospital right then.</p> <p>11 A. I agree.</p> <p>12 Q. What did Dr. Cooper do that was wrong?</p> <p>13 A. I'm sorry. Could you ask that again,</p> <p>14 please.</p> <p>15 Q. What did Dr. Cooper do or not do that</p> <p>16 you're critical of?</p> <p>17 A. Well, I'm critical of the fact that he --</p> <p>18 that the patient was not seen by a provider during</p> <p>19 his incarceration, of which Dr. Cooper is one who</p> <p>20 could have done that, but there was also an APRN who</p> <p>21 could have done that as well.</p> <p>22 Q. Okay. And he should have gone to see him</p> <p>23 sooner is what you're saying.</p> <p>24 A. Well, someone should have seen him is</p> <p>25 what I'm saying.</p>	<p style="text-align: right;">Page 172</p> <p>1 Nurse McCullar did that was wrong?</p> <p>2 A. No.</p> <p>3 Q. What about Turn Key? What are you</p> <p>4 critical of Turn Key? It's been -- it's been sued.</p> <p>5 MR. BLAKEMORE: Didn't he just testify to</p> <p>6 that?</p> <p>7 MR. ARTUS: I don't know. I don't think</p> <p>8 so.</p> <p>9 THE WITNESS: Well, I feel like we spent a</p> <p>10 lot of time going over that.</p> <p>11 MR. ARTUS: Maybe we did. Okay. Is that</p> <p>12 what we've been talking about --</p> <p>13 MR. YOUNG: Start from the top.</p> <p>14 Q. (BY MR. ARTUS) Okay. So that's what</p> <p>15 we've been talking about. Prior to me talking,</p> <p>16 you've been talking about all the things that Turn</p> <p>17 Key did wrong; right?</p> <p>18 A. Correct.</p> <p>19 Q. And we talked about Sheriff Frazier;</p> <p>20 right?</p> <p>21 A. Yes.</p> <p>22 Q. And we've talked about with the board;</p> <p>23 right?</p> <p>24 A. Yes.</p> <p>25 Q. And you don't really have opinions as to</p>
<p style="text-align: right;">Page 171</p> <p>1 Q. Okay. Is that all of your criticism as</p> <p>2 to Dr. Cooper?</p> <p>3 A. Yes.</p> <p>4 Q. And what is your criticism of Nurse</p> <p>5 McCullar? That's M-c-C-u-l-l-e-r.</p> <p>6 MR. YOUNG: I think it's a-r.</p> <p>7 MR. ARTUS: A-r. Sorry.</p> <p>8 THE WITNESS: My criticism is that when</p> <p>9 she evaluated him on the 14th at 11:27 she should have</p> <p>10 sent him to the hospital.</p> <p>11 Q. (BY MR. ARTUS) And of course he was sent</p> <p>12 to the hospital on 11/14/16, a few hours later;</p> <p>13 right?</p> <p>14 A. Yes. Like nine hours later, I think.</p> <p>15 Q. Okay. And she called Dr. Cooper, told</p> <p>16 him what was going on, and Dr. Cooper said put him on</p> <p>17 the list; right?</p> <p>18 A. Correct.</p> <p>19 Q. And so she relied on him; right?</p> <p>20 A. She did.</p> <p>21 Q. And was that wrong of her? She should</p> <p>22 have instead gone against the doctor and sent him to</p> <p>23 the hospital; right?</p> <p>24 A. Based on his presentation, yes.</p> <p>25 Q. Okay. And any other criticisms of what</p>	<p style="text-align: right;">Page 173</p> <p>1 them; is that correct?</p> <p>2 A. I do not.</p> <p>3 Q. Sheriff Frazier and the board, you don't</p> <p>4 have any opinions as to them; correct?</p> <p>5 A. That's what I said.</p> <p>6 MR. ARTUS: Okay. I think I am going to</p> <p>7 pass the witness.</p> <p>8 MR. BLAKEMORE: I actually do have a few</p> <p>9 questions, believe it or not.</p> <p>10 THE WITNESS: Okay.</p> <p>11 EXAMINATION</p> <p>12 BY MR. BLAKEMORE:</p> <p>13 Q. All right. So one of the things that</p> <p>14 you've testified to is that you're critical of the</p> <p>15 lack of documentation in the medical records;</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. And throughout your deposition today</p> <p>19 defense counsel has asked you about potential issues</p> <p>20 with Mr. Buchanan's memory; correct?</p> <p>21 A. Correct.</p> <p>22 Q. Are you aware that there was -- there was</p> <p>23 actually surveillance video of Mr. Buchanan that was</p> <p>24 taken of him while he was at the jail?</p> <p>25 A. I am aware that there -- that video did</p>

<p style="text-align: right;">Page 174</p> <p>1 exist at one point, and I believe that it does not</p> <p>2 exist now.</p> <p>3 Q. Okay. Would that -- would that</p> <p>4 surveillance video have been helpful to you in</p> <p>5 arriving at your opinions in this case?</p> <p>6 A. Oh, it would have been immensely helpful.</p> <p>7 Q. Okay. And how would it have been</p> <p>8 helpful?</p> <p>9 A. Well, it would have provided an objective</p> <p>10 assessment of his level of functioning.</p> <p>11 Q. Do you have any understanding as to</p> <p>12 what -- what happened to the video?</p> <p>13 A. I don't know. You informed me that it</p> <p>14 didn't exist any longer.</p> <p>15 MR. BLAKEMORE: Okay. Those are all the</p> <p>16 questions that I have.</p> <p>17 MR. ARTUS: Do you want to advise him on</p> <p>18 read and sign?</p> <p>19 I don't know if you have to do it here.</p> <p>20 Oh, did you have any other questions?</p> <p>21 I'm sorry.</p> <p>22 MR. YOUNG: No. I'm good.</p> <p>23 MR. ARTUS: You have to say if you want to</p> <p>24 read and sign or waive.</p> <p>25 MR. BLAKEMORE: I'll leave that to you.</p>	<p style="text-align: right;">Page 176</p> <p>1 Case: James D. Buchanan vs. Turn Key Health Clinics</p> <p>2 Case No.: 18-CV-171-RAW</p> <p>3 Reported by Jerry R. Martin, RPR</p> <p>4 Date Taken: Tuesday, July 2, 2019</p> <p>5</p> <p>6 WITNESS CERTIFICATE</p> <p>7 I, Todd R. Wilcox, M.D. HEREBY DECLARE:</p> <p>8</p> <p>9 That I am the witness in the foregoing</p> <p>10 transcript; that I have read the transcript and know</p> <p>11 the contents thereof; that with these corrections I</p> <p>12 have noted this transcript truly and accurately</p> <p>13 reflects my testimony.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page-Line Change-Correction Reason</p> <p>No corrections were made.</p> <p>I, Todd R. Wilcox, M.D., deponent herein,</p> <p>do hereby certify and declare under penalty of</p> <p>perjury the within and foregoing transcription to be</p> <p>true and correct.</p> <p>Todd R. Wilcox, deponent</p> <p>SUBSCRIBED AND SWORN to at _____</p> <p>_____, this _____ day of _____, 2019.</p> <p>Notary Public _____</p>
<p style="text-align: right;">Page 175</p> <p>1 THE WITNESS: I'll read and sign.</p> <p>2 MR. BLAKEMORE: Yeah.</p> <p>3 MR. ARTUS: Thank you for your time.</p> <p>4 Appreciate it.</p> <p>5 THE WITNESS: You're welcome.</p> <p>6 MR. ARTUS: I'm okay with just electronic.</p> <p>7 MR. YOUNG: All electronic, and I like the</p> <p>8 minis.</p> <p>9 MR. BLAKEMORE: Because we are on Apple,</p> <p>10 we just do searchable PDF. Is that doable?</p> <p>11 (Concluded at 2:30 p.m.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 177</p> <p>1 CERTIFICATE</p> <p>2 STATE OF UTAH)</p> <p>3 COUNTY OF UTAH)</p> <p>4 THIS IS TO CERTIFY that the deposition of</p> <p>5 TODD R. WILCOX, M.D., was taken before me, Jerry R.</p> <p>6 Martin, a Registered Professional Reporter in and for</p> <p>7 the state of Utah;</p> <p>8</p> <p>9 That the said witness was by me, before</p> <p>10 examination, duly sworn to testify the truth, the</p> <p>11 whole truth, and nothing but the truth in said cause;</p> <p>12</p> <p>13 That the testimony of said witness was by</p> <p>14 me reported in stenotype, and therefore caused to be</p> <p>15 transcribed into typewriting, and that a full, true,</p> <p>16 and correct transcription of said testimony so taken</p> <p>17 and transcribed is set forth in the foregoing pages,</p> <p>18 numbered 4 to 175, inclusive, and said witness</p> <p>19 deposed and said as in the foregoing annexed</p> <p>20 deposition;</p> <p>21</p> <p>22 I further certify that I am not of kin or</p> <p>23 otherwise associated with any of the parties to said</p> <p>24 cause of action, and that I am not interested in the</p> <p>25 event thereof. WITNESS MY HAND AT SPANISH FORK,</p> <p>UTAH, THIS 9TH DAY OF JULY, 2019.</p> <p>JERRY MARTIN, RPR _____</p>